United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

77-7021

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United States Court of Appeals

FOR THE SECOND CIRCUIT

(Case No. 77-7021)

ALLEN P. SCHLEIN, M.D.
Plaintiff — Appellant

VS.

THE MILFORD HOSPITAL, INC.
Defendant — Appellee

On Appeal from Decision of the United States District Court, District of Connecticut

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JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

ALLEN SCHLEIN, M.D.,)
Plaintiff,)
)
VS.)
)
THE MILFORD HOSPITAL, a)
Connecticut Corporation,)
Defendant)

CIVIL ACTION
NO.__________

N 74-169

COMPLAINT

Now comes the Plaintiff, Allen Schlein, M.D., by his attorneys, Bennett, Kapusta and Coughlin, complaining of Defendant, The Milford Hospital, and alleges as follows:

1. This action arises under the provisions of Sections 1983 and 1985(3) of Title 42 of the United States Code and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction under Title 28 Section 1343 of the United States Code. Defendant conducts its business and committed the wrongful acts herein alleged in the District of Connecticut.

2. The Defendant, The Milford Hospital, is a corporation organized and licensed under the laws of the State of Connecticut and subject to regulation by the State of Connecticut in transacting its business of conducting a hospital for the benefit of the citizens of Milford and the State of Connecticut. The Defendant has received financial benefits under The Hill-Burton Act (60 Stat. 1040 (1956) 42 USC #291 et seq) and committed all of the wrongful acts hereinafter set forth under color of State law.

3. The Plaintiff is a physician and orthopedic surgeon duly

licensed to practice medicine in the State of Connecticut. The Plaintiff is a qualified and capable physician and orthopedic surgeon and has consistently displayed such throughout his practice. He has limited his practice to the field of orthopedics, and orthopedic surgery, having been certified by The American Board of Orthopedics in 1972. Prior thereto Plaintiff served at the Mayo Clinic in Rochester, Minnesota; at Weiss Memorial Hospital in Chicago, Illinois; and taught at the University of Illinois Medical Center in Chicago, Illinois.

4. The Plaintiff maintains an office for the practice of Orthopedic Surgery in Bridgeport, Connecticut and Milford, Connecticut and is Chief of Orthopedics at Park City Hospital, Bridgeport, Connecticut, and additionally, has privileges to practice his specialty at St. Vincent's Hospital, Bridgeport, Connecticut and Bridgeport Hospital, Bridgeport, Connecticut.

5. The Plaintiff has received notoriety in the field of Orthopedic Surgery for his work in designing and consistently and successfully performing total elbow replacements and also, pioneer work in total ankle replacement. Additionally, he has lectured at hospitals and medical groups throughout the United States and has performed total elbow replacement in various hospitals.

6. On June 7, 1973, Plaintiff who has an office in the City of Milford, applied for privileges at Defendant, The Milford Hospital. The Plaintiff has numerous patients who are residents of the City of Milford and entitled to use of its facilities.

7. Thereafter on August 23, 1973, the Credentials Committee of Defendant which has the duty to investigate the character, qualifications, references and standing of applicants for privileges, deferred action on said application pending further information. On September 13, 1973, the Credentials Committee of the Defendant, voted to grant the Plaintiff provisional privileges in orthopedic surgery. Thereafter, the Executive Committee of Defendant met on September 25, 1973, and approved Plaintiff's application. On October 3, 1973, the Credentials Committee of the Defendant reconsidered its recommendation and revoked the privileges of Plaintiff. On October 4, 1973, the Executive Committee of the Defendant refused to agree to such revocation. On October 5, 1973, the Medical Staff of Defendant Hospital, rejected Plaintiff. Thereafter, the matter was reconsidered by the Credentials Committee of the Defendant. On December 6, 1973, it voted to reject Plaintiff's application. On December 7, 1973, the Medical Staff voted to accept the Credentials Committee of the Defendant's recommendation and rejected Plaintiff's application and notified Plaintiff by letter dated December 7, 1973. Pursuant to the By-Laws of the Medical Staff of Defendant (Article VIII Section 1) Plaintiff requested a hearing before an Ad Hoc Committee, which was held January 3, 1974. On January 23, 1974, Plaintiff was notified by letter of the rejection of his application. Plaintiff thereafter requested appellate review as required in the By-Laws of Defendant. On February 27, 1974, appellate review was held

before the Executive Committee of the Defendant. Thereafter, Plaintiff's application was denied.

Although the By-Laws of Defendant provide (Article VIII Section 5 (i)) Plaintiff has the right to cross-examine any witnesses to challenge any witness and to rebut evidence, the Defendant never produced any witnesses against him, but arbitrarily, capriciously and unreasonably rejected his application by relying on hearsay statements and letters.

Plaintiff requested the presence of an attorney to protect his constitutional rights to due process, but was denied that right at the hearing before the Ad Hoc Committee on January 3, 1974. The Plaintiff was permitted an attorney at the appellate review stage where the only evidence before the review board was hearsay and evidence without a factual basis, obtained at the time of the Ad Hoc Committee hearing.

8. The action of the Defendant in denying privileges to the Plaintiff was aribitrary, capricious, unreasonable, encumbered with irrelevant considerations, not geared to a rationale compatible with hospital responsibility and has deprived Plaintiff of due process and equal protection of law under the Fourteenth Amendment of the Constitution of the United States.

9. By the wrongful acts, as hereinafter set forth /and alleged the Defendant has denied to the Plaintiff due process of law and equal protection of law in violation of the Fourteenth Amendment to the United States Constitution, and of Section 1983 of Title 42

of the United States Code by denying him privileges at the hospital.

a. by not providing him with a clear statement of the charges against him.

b. by not affording him a reasonable opportunity to be heard and answer charges against him and to present a defense thereto.

c. by not affording him an opportunity to confront and cross-examine his accusers.

d. by not providing him an impartial hearing.

e. by not requiring objective standards for the Plaintiff to meet to receive privileges.

f. by not producing witnesses so that he might exercise his right of cross-examination and confrontation of witnesses.

g. by basing its findings on hearsay evidence which was not factual and was conclusionary in nature.

h. by denying him privileges without any fctual basis for so doing.

i. by denying him the right to counsel at the hearings.

j. by not being permitted to confront any or all of the witnesses whose statements had been considered by the Defendant.

10. The Defendant's unreasonable, arbitrary and capricious act in denying Plaintiff the use of the facility for his patients and in denying him privileges at said hospital has adversely and harmfully damaged Plaintiff's opportunities to

properly practice his profession of medicine, has caused irreparable harm and damage to his reputation as a doctor and orthopedic surgeon and to his ability to properly and satisfactorily perform his medical duties to his patients and has and will continue to cause Plaintiff loss of earnings, humiliation, pain and suffering and loss reputation in an amount of $1,000,000.

WHEREFORE, The Plaintiff prays for

1. A temporary and permanent injunction requiring Defendant to grant to Plaintiff all the rights and privileges of a member of the Medical Staff of Defendant hospital.
2. $1,000,000.00 damages.
3. Costs and reasonable attorney's fees.
4. Such other relief as the Court may deem proper.

THE PLAINTIFF, ALLEN SCHLEIN, M.D.
BY BENNETT, KAPUSTA AND COUGHLIN

BY ______________________________
John J. Coughlin
Attorneys for Plaintiff
75 Broad Street
Milford, Connecticut 06460

BENNETT, KAPUSTA & COUGHLIN
Counsel of Record
75 Broad Street
Milford, CT 06460

Robert Kapusta, Esq.
William K. Bennett, Esq.
John J. Coughlin, Esq.
John J. Bennett, Esq.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT 74-169

CIVIL ACTION FILE #__________

ALLEN SCHLEIN, M.D., of the
Town of Stratford

VS.

THE MILFORD HOSPITAL, a)
Connecticut corporation)
with a principal place of)
business in the City of)
Milford, County of New)
Haven and State of)
Connecticut)

S U M M O N S

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned and required to serve upon John J. Coughlin, Esq. ~~BENNETT, KAPUSTA AND COUGHLIN~~, Plaintiff's attorney, whose address is 75 Broad Street, Milford, Connecticut, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

SYLVESTER A. MARKOWSKI
CLERK OF THE COURT
By Mary A. Ciezynski
Deputy Clerk

July 5, 1974

A True Copy
ATTEST:

SYLVESTER A. MARKOWSKI
Clerk, U. S. District Court

By: Mary A. Ciezynski
Deputy [redacted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

. . . . :

ALLEN P. SCHLEIN, :
Plaintiff :

VS. : CIVIL ACTION NO. N-74-169

THE MILFORD HOSPITAL, INC. :
Defendant :

. . . . :

DEFENDANT'S ANSWER

1. Paragraph 1 is denied.

2. As to Paragraph 2, the Defendant admits that The Milford Hospital, Inc. is a corporation organized and existing pursuant to the laws of the State of Connecticut, subject to regulations by the State of Connecticut. The remainder of the paragraph is denied.

3. The Defendant admits that the Plaintiff is a physician and orthopedic surgeon duly licensed to practice medicine in the State of Connecticut. As to the remainder of said paragraph, the Defendant has insufficient knowledge so as to form a belief thereto and leaves the Plaintiff to its proof.

4. As to Paragraph 4, the Defendant has insufficient knowledge so as to form a belief thereto and leaves the Plaintiff to its proof.

5. As to Paragraph 5, the Defendant has insufficient knowledge so as to form a belief thereto and leaves the Plaintiff to its proof.

6. The Defendant admits that the Plaintiff applied for staff privileges at The Milford Hospital, Inc. As to the remainder of paragraph 6, the Defendant has insufficient knowledge so as to form a belief thereto and leaves the Plaintiff to its proof.

7. The Defendant admits that the Plaintiff's application was processed by the Credentials Committee of the Medical Staff, and was thereafter presented to the full Medical Staff, to an Ad Hoc Hearing Committee of the Medical Staff on January 23, 1974 and that an Appellate Review of the prior denial of Plaintiff's application was held by the Executive Committee of the Board of Directors of the Hospital on February 27, 1974, resulting in the denial of Plaintiff's application. The remaining allegations of the paragraph are denied.

8. Paragraph 8 is denied.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

DEFENDANT'S AFFIRMATIVE SPECIAL DEFENSE

The action of the Defendant in denying the Plaintiff staff privileges was the action of a private institution and was not the implementation of state action sufficient to grant to this Court subject matter jurisdiction pursuant to the provisions of the Civil Rights Act, i.e. 42 USC 1983 or the Fourteenth Amendment to the Constitution of the United States. Therefore, this Court lacks jurisdiction of the subject matter and the action should be dismissed.

THE DEFENDANT

By Stephen E. Ronai
Stephen E. Ronai, Esquire For
Gitlitz, Ronai & Berchem #22801
81 Broad Street
Milford, Connecticut 06460

By Jeremy G. Zimmerman
Jeremy Zimmerman, Esquire For
Wiggin & Dana
205 Church Street
New Haven, Connecticut

-Its Counsel-

CERTIFICATION

This is to certify that on the 4th day of December, 1974, a copy of the foregoing was mailed, postage prepaid, to John J. Coughlin, Esquire, 75 Broad Street, Milford, Connecticut.

Stephen E. Ronai
Stephen E. Ronai

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, MD *
* CIVIL NO. N 74-169
VS. *
* AFFIDAVIT
THE MILFORD HOSPITAL, INC. *

The undersigned, being duly sworn, deposes and says:

1. I am the plaintiff in the above styled case.

2. I reside at 205 Booth Street, Stratford, Connecticut.

3. I am a physician duly licensed to practice medicine in the State of Connecticut and several other states.

4. I am associated in the practice of medicine with Orthopaedic Surgery Associates with offices at 837 Fairfield Avenue, /Bridgeport and 75 New Haven Avenue, Milford, Connecticut.

5. I have limited my practice to the specialty of orthopaedic surgery.

6. The following credentials demonstrate my professional competence which meet the qualifications, standards and requirements of the Milford Hospital By-Laws:

EDUCATION:	PRE-MEDICAL: Stevens Institute of Technology, Hoboken, New Jersey, B. S. 1961 MEDICAL: Jefferson Medical College, Philadelphia, Pa. M.D. 1965
INTERNSHIP:	Philadelphia General Hospital June 1965 - June 1966
RESIDENCY:	Orthopaedic Surgery, Mayo Foundation, Rochester, Minnesota, July 1966 - July 1970

CERTIFICATION:	American Board of Orthopaedic Surgery, September 22, 1972
LICENSURES:	Illinois, July 1970, License #36-43489 Minnesota, License #17870 California, License #618255 Connecticut, License #15621 New York
SPECIALTY AND PRACTICE:	Orthopaedic Surgery
HOSPITAL STAFF: Previous	Louis A. Weiss Memorial Hospital, Chicago, Illinois
HOSPITAL STAFF: Current	Park City Hospital, Bridgeport, Conn. St. Vincent's Hospital, Bridgeport, Conn. Bridgeport Hospital, Bridgeport, Conn.
POSITION HELD: Current	Chief of Orthopaedics, Park City Hospital, Bridgeport, Connecticut
MILITARY SERVICE:	Captain, U. S. Army Reserve
TEACHING:	Clinical Associate, University of Illinois, School of Medicine
MEMBERSHIPS IN MEDICAL SOCIETIES:	American Medical Association Chicago Medical Society Illinois State Medical Society American Association of Automotive Medicine

7. I have written and published the following medical treatises:

A-C Separations, Fracture Conf., Minnesota Medicine, Vol. 51, pp. 663-670, May, 1968

The Intoxicated Motor Vehicle Operator, Chapter in Symposium of Int. Cong. of Automotive and Traffic Safety, June 4, 1969

Performance of a Vitallium Olecranon Prosethesis; Case Report with 13 Year Follow-Up, Journal of Bone and Joint Surgery, Vol. 52-A, No. 4, pp. 721-724

Modified Robert Jones Dressing, Proceedings of Mayo Clinic, August 1970

Clinical Treatment of Back and Neck Pain, by Hans Kraus, M.D., McGraw Hill, 1970, 156 pages, (Book Review)

The Dual Mallet Finger. The British Society for Surgery of the Hand. Hutton, Essex, England

The Dual Finger Dislocation. British Society for Surgery of the Hand. Hutton, Essex, England

Fracture Converence, Birth Fractures, Minnesota Medicine, Vol. 55, pp. 471-474, May, 1972

8. I have been actively involved in medical research and have:

a. designed a total elbow which has been approved by the Federal Durg Administration as to the mode of fixation with poly-methylmethacrylate

b. designed total ankle presently under Federal Drug Administration consideration as to the mode of fixation with poly-methylmethacrylate

c. involved in current research to improve technique of insertion of acetabular preparation of total hip arthroplasty

d. improved and simplified a halo device for use in cervical spinal injuries

e. development of a practical battery operated Kirshner wire inserter

f. developed a vise grip meniscus clamp

9. I submitted an application to the Milford Hospital, Inc. for hospital staff privileges which application was dated June 7, 1973.

10. I received notice by letter dated December 7, 1973, that the Medical Hospital Staff voted to deny my application for hospital staff privileges . A copy of said letter is attached hereto and marked Exhibit 'A'.

11. I gave the Milford Hospital, Inc. notice of appeal of the adverse recommendation for hospital staff privileges in accordance with Article VIII of the By-Laws, Rules and Regulations of the Milford Hospital, Inc. by letter dated December 18, 1973.

12. I requested that the Milford Hospital, Inc. notify me in writing in concise language of the reasons, subject matter, and/or acts that were considered in making the adverse recommendation by the Milford Hospital Medical Staff, which request was made pursuant to Article VIII, Section 3 (b) of said By-Laws. A copy of the notice of appeal and the request are attached hereto and marked Exhibit 'B'.

13. The notice of appeal dated December 18, 1973, set forth a request that I be permitted the right to be represented at the "ad hoc" hearing by an attorney of my choice as the denial of hospital staff privileges constituted a denial of my right to practice my profession within said hospital and further, reflected on my competence and professional conduct.

14. I received a letter dated December 28, 1973, from George R. Plaskowitz, administrator of the Milford Hospital, Inc. which was notification that a hearing would be held pursuant to Article VIII, Sec. 3 (a) of the By-Laws, Rules and Regulations of the Medical Staff of the Milford Hospital, Inc. on my appeal.

15. The letter of December 28, 1973, from the Milford Hospital, Inc. proported to advise me that my request for hospital staff privileges had been denied for four reasons, however, the reasons in the letter of December 28, 1973, did not set forth in concise language the subject matter and acts that were considered in making the adverse recommendation by the Medical Staff.

16. On Thursday, January 3, 1974, an "ad hoc committee" of the Medical Staff of the Milford Hospital, Inc. held a hearing on

my appeal at which time my counsel, who appeared with me, was denied participation in the hearing and was requested to leave the hearing room.

17. I was denied the representation of counsel at a crucial hearing concerning my right to practice my specialty of orthopaedic surgery in the Milford Hospital, Inc.

18. Article VIII, Sec. 3 (b) of the By-Laws of the Milford Hospital, Inc. provides that the notice of hearing shall state in concise language the acts or omissions with which the practitioner is charged, a list of specific or representive charts being questioned and/or the other reasons or subject matter that was considered in making the adverse recommendation or decision. The Milford Hospital, Inc. failed to comply with the aforesaid provision of the By-Laws, and at the time of the "ad hoc" hearing, I had little or no knowledge concerning the reasons for the denial of my hospital staff privileges and/or the charges against me.

19. Article VIII, Sec. 5 (i) of the By-Laws of the Milford Hospital, Inc. provide that the affected practitioner shall have the following rights: to call and examine witnesses, to introduce written evidence, to cross examine any witnesses on any matter relevant to the issues of the hearing, to challenge any witness and to inspect any evidence.

20. At the time of the "ad hoc committee" hearing on January 3, 1974 [illegible] could not cross examine witnesses as none were presented; I could not challenge witnesses against me as none were called.

21. The representative of the Medical Staff who was under an

obligation to support the adverse recommendation of the denial of my hospital staff privileges by the submission of evidence and the presentation of witnesses, failed to present witnesses or testimony to support the denial. The representative used conclusionary and hearsay statements which destroyed my right to confront the individuals making the accusations and challenge the statements.

22. I was denied the right to cross examine witnesses at the time of the hearing, which was contrary to the By-Laws.

23. Article VIII, Sec. 5 (h) of the By-Laws of the Milford Hospital, Inc. provides in part that "it shall be the obligation of such representative to present appropriate evidence in support of the adverse recommendation." At the time of the hearing on January 3, 1974, appropriate evidence was not submitted in support of the adverse recommendation nor were witnesses examined as provided by said section.

24. I received a letter dated January 23, 1974, from the Milford Hospital, Inc. notifying me that the "ad hoc committee" after due deliberation, recommended to the Medical Staff that my application for hospital privileges be denied. The report of the "ad hoc committee" was accepted by the Medical Staff on January 22, 1974. A copy of said letter is attached hereto and marked 'C'.

25. I notified the Milford Hospital, Inc. of my intent to appeal the decision in accordance with Article VIII, Sec. 6 of the By-Laws of the Medical Staff of the Milford Hospital, Inc. to the Appellate Review Committee. A hearing was held before the Appellate Review Committee on February 27, 1974. The Appellate Review was heard on the record with the exception that I was permitted to submit additional letters of recommendation. Copies of

these letters are attached hereto and made a part of this Affidavit and marked Exhibits 'D' through 'M'.

26. I received a letter dated March 26, 1974, from the Milford hospital, Inc. advising me that a special meeting of the Appellate Review Committee unanimously passed a resolution that the adverse recommendation of the Medical Staff be referred back to the Medical Staff for further consideration, review, and recommendation. Copy of said letter is attached hereto and marked 'N'

27. I received a letter dated April 25, 1974, notifying me that the Medical Staff's recommendation to deny my application for hospital staff privileges was upheld and further, that the Appellate Review Committee voted unanimously to affirm the negative recommendation thereby denying my application for hospital staff privileges, at the Milford Hospital, Inc. A copy of said letter is attached hereto and marked Exhibit 'O'

28. The Milford Hospital, Inc. has received federal assistance under the Hill Burton Program. Before said funds can be received under said program, assurances are secured that the facility make its services available to the community; that the facility will be operated in accordance with the state's requirements for operation and maintenance. This information was obtained by a letter dated February 22, 1974, from Harold M. Graning, Assistant Surgeon General, United States. A copy of said letter is attached hereto and marked Exhibit 'P'.

29. The assurances required under the Hill Burton Program is attached hereto and marked Exhibit 'Q'

30. When I am required to hospitalize Milford patients, I must admit them to a Bridgeport hospital due to the denial of my privileges at the Milford Hospital, Inc.

31. The Milford Hospital, Inc. is the only hospital in the City of Milford with a population in excees of 50,000.00.

Allen P. Schlein
ALLEN P. SCHLEIN

STATE OF CONNECTICUT)
: ss. Milford, July 22, 1974
COUNTY OF NEW HAVEN)

Personally appeared ALLEN P. SCHLEIN, M.D. who made oath to the truth of the foregoing and subscribed the same in my presence.

John J. Coughlin
John J. Coughlin
Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D. Plaintiff	:	
VS.	:	CIVIL NO. N-74-169
THE MILFORD HOSPITAL, INC. a Connecticut corporation Defendant	:	

AFFIDAVIT OF GEORGE R. PLASKOWITZ, ADMINISTRATOR OF THE MILFORD HOSPITAL, INC. IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)1 and 12(b)6 OF THE FEDERAL RULES OF CIVIL PROCEDURE

I, GEORGE R. PLASKOWITZ, being duly cautioned and sworn, herewith depose and state:

1. I am the administrator of The Milford Hospital, Inc. and have been acting in such capacity since 1966.

2. I have read the complaint in this action, brought in behalf of Allen Schlein, M.D. I understand that Dr. Schlein, through his counsel, is alleging that The Milford Hospital, Inc., in denying Dr. Schlein staff privileges, violated certain provisions of the United States Constitution, and further, that the denial of privileges violated, allegedly, the Civil Rights Act known as Section 1983 of Title 42 of the United States Code.

3. I have read the allegation in the complaint whereby Dr. Schlein, through his counsel, claims that the Board of Directors of The Milford Hospital committed a wrongful act under the "color or state law" and as a

14-13.05

result of said doctrine, Dr. Schlein, through his counsel, claims that this Court has jurisdiction of the action.

4. As administrator of the hospital, I received the application of Dr. Schlein for privileges on the medical staff of The Milford Hospital on June 7, 1973, and I am personally familiar with the facts of this transaction, from the date of the application to the date of this affidavit. Based on my personal knowledge of the facts in this case, and of my long-term association with the hospital as administrator, I am submitting this affidavit to support our counsel's motion to dismiss the complaint on the ground that The Milford Hospital, Inc. is a private, self-governing, non-profit organization and therefore, in denying Dr. Schlein s application, did not act under color of state law.

5. The Milford Hospital is governed by a Board of Directors which is presently composed of 23 laymen, 2 of which are physicians on the staff. Neither the State, nor the United States Government, is involved in control or participation in the management or policies of the internal affairs of the hospital or in decisions relating to appointments to the medical staff. Consequently, the action taken by the Board of Directors of The Milford Hospital in denying to Dr. Schlein his privileges was the action of a private corporation and a private hospital, having the right to exercise control over its internal operations and management.

6. The Milford Hospital is a corporation organized and existing under the Non-Stock Corporation Act of the State of Connecticut, i.e. Section 33-243 of the Connecticut General Statutes. The corporation was organized as a private hospital corporation by an enabling act of the General Assembly on July 6, 1920. It was organized at that time as The Milford Hospital Society. The Board of Directors of The Milford Hospital Society, on August 26, 1969, amended and restated the original Certificate of Incorporation and filed the same with the Secretary of State, said filing being effective on September 9, 1969. (See Exhibit A annexed hereto; certified copy of amended and restated Certicicate of Incorporation of The Milford Hospital, Inc.; August 26, 1969).

7. An examination of said amended and restated Certificate of Incorporation, (Exhibit A annexed hereto) indicates quite clearly that The Milford Hospital, Inc. is chartered as a private, non-stock, non-profit corporation. (See Paragraph 2F) The Certificate of Incorporation provides that the management of the corporation shall be vested as follows:

> "4. The management and conduct of all the business affairs of the corporation shall be directed by the Board of Directors of not less than twelve members who shall be elected and who shall serve in accordance with the provisions of the by-laws hereinafter established. The terms of directors, the manner of filling vacancies, and all other related matters shall be governed by the by-laws hereinafter established."

8. The by-laws of The Milford Hospital, Inc. (see Exhibit B annexed hereto) were adopted as amended on May 22, 1973. The by-laws implement the provisions of the Certificate of Incorporation with respect to the members of the corporation, who are called Corporators. The Corporators are elected by a majority vote of the Corporators at the annual meeting of the corporation and are chosen from the community on the basis of their potential contribution to the hospital, without regard to sex, age, occupation, race or religion.

9. The management and conduct of the hospital is vested, pursuant to Article III of the by-laws in the Board of Directors. (See Article III, Section 1). Members of the Board must be Corporators in good standing of The Milford Hospital, Inc. The by-laws limit the maximum number of directors to not more than 27 directors. The directors are elected by the Corporators at the annual meeting. Two of the directors are members of the medical staff and one member, myself, is the hospital administrator. Although one of the positions on the Board of Directors is reserved for the Mayor of the City of Milford, the Mayor does not act as a representative of the State or Federal government with respect to the regulation of hospital and health care and is merely a nominal representative of the City. While the Mayor's presence is welcome, he serves on the Board as a private citizen and acts in that capacity.

10. Article III, Section 2 of the by-laws sets forth the duties of the Directors. This article clearly states that the directors "have the power to manage and conduct all the business and affairs of the corporation". Section 2A permits the Board of Directors, "to the extent permitted by law," to delegate power and authority to duly elected committees and to the duly appointed hospital administrator.

11. The Executive Committee of the Board of Directors (see Article VII, Section C3) is granted the power, in intervals between the meetings of the Board of Directors to exercise and possess all of the powers of the Board of Directors in the management of the affairs of the hospital.

12. The remainder of Article III sets forth the provisions concerning the meetings of directors, notices of meetings and the filling of vacancies. It is quite clear from an examination of these by-law provisions that the by-laws provide for the management and conduct of all of the business affairs of the corporation to be vested in private individuals and that the State of Connecticut and the Federal government has no voice, indirect or direct, or control with respect to the participation in the management or control of the policy of the hospital. Decisions with respect to hospital policy concerning admissions, personnel, purchase of equipment and other

similar matters, are decided by the Executive Committee and the Board of Directors without intervention or participation of any state or governmental agency. While members of the Board of Directors and the Executive Committee are always conscious of their significant duty to insure a high quality of care to the public, the hospital is run essentially in the same manner as a private business corporation.

13. As administrator, my duties are set forth in Article VIII of the by-laws. (See page 15). I act as a delegate and authorized representative of the Board of Directors or the Executive Committee and I am charged with the duty and responsibility to enforce all by-laws, rules and regulations for the proper conduct of the hospital at the direction and under specific authority of the Board of Directors. I act as the official representative of the hospital, at the direction of the Board of Directors, with respect to appropriate outside agencies. In my approximately eight years of association with The Milford Hospital, Inc., I have never witnessed any action taken by the Board of Directors with respect to internal management or policy that has been controlled by an agency of the State of Connecticut or the United States Government.

14. I have also read paragraph 2 of the complaint prepared by Dr. Schlein's counsel, in which he alleges that "the defendant has received financial benefits under the Hill-Burton Act (60 Stat. 1040 (1956), 42 U.S.C. §291 et.

seq.). To the extent that the plaintiff's counsel claims that this hospital has received moneys pursuant to the "Hospital Survey and Construction Act" 42 U.S.C. 291, the statement by plaintiff's counsel is correct. However, the receipt by the hospital's Board of Directors of the funds in the amounts set forth below, has not converted the essentially private nature of the hospital to a public hospital.

15. In 1968, The Milford Hospital constructed a new wing and a new emergency room facility, as well as other interior improvements, at a total cost of $3,300,000. The following is the breakdown of the revenue received and used with respect to that new addition:

Bond issue	$1,900,000.	
Private contributions	1,000,000.	(approx.)
Hill-Burton Funds	400,000.	
Total	$3,300,000.	

16. In the construction of the maternity wing in 1963, I am familiar with the fact that the $600,000 total cost of the wing was defrayed to the extent of $150,000 by Hill-Burton Funds.

17. In the construction of the memorial wing in 1961, the cost of construction, i.e. $400,000 was defrayed to the extent of $96,000 by Hill-Burton Funds.

18. The receipt of these funds does not convert or change the manner of operation of the hospital by the Board of Directors and Executive Committee as a private

hospital. The hospital is required, before obtaining such funds, to grant assurances that it will "treat certain indigent patients free of charge and that no person would be denied admission because of race, creed or color." However, I am familiar with a provision of the Hill-Burton Act which prevents and negates the right of any federal officer or employee "to exercise any superivision or control over the administration, personnel, maintenance or operation of any hospital with respect to which any funds may have been expended" under the [Hospital Survey and Construction Act.] See 42 U.S.C. Sec. 291m.

19. Furthermore, to the extent that the plaintiff and his counsel in their brief may claim that The Milford Hospital, Inc. is essentially a "public" hospital because of the hospital being the sole acute care hospital in the community, this statement is inaccurate in that it overlooks the availability to Milford residents of acute care facilities in nearby New Haven and Bridgeport, and Derby, Connecticut. Annexed hereto as Exhibit C are copies of pages IV-12 and VII-40 of the Connecticut State Plan for Construction of Hospitals and Medical Facilities, known colloquially as the "Hill-Burton Plan". The Plan contains a census and review of the availability and use of health care facilities in the State of Connecticut with a view toward planning and construction for the future in order to insure the adequate delivery of health care to the public. The Plan is prepared by the Department of Health, Education

and Welfare, Public Health Service and adopted by the State Department of Health each year. The appropriate pages of the Plan are from the 1973 report adopted by the State Department of Health on April 2, 1974. Page IV-12 indicates that in the comprehensive health planning area known as the South Central Valley, the United States government considers The Milford Hospital to be in the same geographic patient service area with 12 other hospitals, out-patient facilities, and community health organizations ranging as far north as Meriden. Furthermore, VII-40 which is a census of patient origin and choice of hospitals based on a 1971 Health Department survey, indicates that citizens of Milford not only use The Milford Hospital, but use also the Bridgeport Hospital located in Bridgeport, Connecticut, the Yale-New Haven Hospital and St. Vincent's Hospital located in Bridgeport. I am personally familiar with the fact that Milford residents also use the Griffin Hospital, in Derby, Connecticut. Therefore, it is quite clear that The Milford Hospital does not render services to its patients in an isolated geographical area so as to become the only "public" acute care facility in the area.

20. Therefore, for all of the reasons above, the affiant states that The Milford Hospital is a private non-stock corporation and that the decision in denying staff privileges to Dr. Allen P. Schlein was the decision of the Board of Directors of a private non-stock corporation

which was made by the Directors as a bona-fide discretionary management decision representing their judgment as to what constituted an appropriate decision for the health needs of the community. Although the underlying merits and facts of this dispute are not here relevant, I am personally familiar with all of the facts from the date of the application and I am personally familiar with the entire file in this matter. Based on my review of the file and my personal knowledge, it is my judgment that Dr. Allen P. Schlein received meticulous care and attention with respect to the procedure reserved by the medical staff, by the Ad Hoc Hearing Committee of the medical staff (which held hearings on two occasions) and by the governing board which held a full hearing with the right of representation by counsel and a transcript.

GEORGE R. PLASKOWITZ

Subscribed and sworn to before me this day of August, 1974.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D. :
Plaintiff :
:
VS. : CIVIL NO. N-74-169
:
THE MILFORD HOSPITAL, INC. :
a Connecticut corporation :
Defendant :

AFFIDAVIT OF FRED B. WARREN, PRESIDENT OF THE MILFORD HOSPITAL, INC. IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)1 and 12(b)6 OF THE FEDERAL RULES OF CIVIL PROCEDURE

I, FRED B. WARREN, being duly cautioned and sworn, herewith depose and state:

1. I am President of The Milford Hospital, Inc. having been duly elected by the vote of the Corporators at the annual meeting of the Corporation held in February of 1974.

2. Prior to my election, I served as a Director, a member of the Executive Committee and as Chairman of the Executive Committee for a period of 8 years.

3. I have read the complaint prepared by counsel for Dr. Allen Schlein in this matter as well as having read the affidavit of George R. Plaskowitz, Administrator of The Milford Hospital, Inc., dated August 6, 1974.

4. I herewith re-affirm and expressly adopt the statements in Mr. Plaskowitz's affidavit concerning the private character of The Milford Hospital, Inc. I have

participated in hundreds of business decisions and business judgments with respect to The Milford Hospital, Inc. In absolutely none of those decisions did any member or a state or federal government control the ultimate decision of the Board of Directors of the Executive Committee or participate directly or indirectly to the extent where the management decision was influenced by a public agency.

5. I am familiar with the amended and restated Certificate of Incorporation, and the by-laws of the corporation, contained as Exhibits to Mr. Plaskowitz's affidavit.

6. I herewith re-assert that those documents, together with the manner in which the Board of Directors and the Executive Committee operate, establish quite clearly that the management and conduct of all of the business and affairs of The Milford Hospital, Inc. is as a private, non-stock corporation.

FRED B. WARREN

Subscribed and sworn to before me this day of August, 1974.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D. Plaintiff	:	
VS.	:	CIVIL NO. N-74-169
THE MILFORD HOSPITAL, INC. a Connecticut corporation Defendant	:	

AFFIDAVIT OF C. J. LIPKOFF, M.D. IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION

I, C. J. LIPKOFF, being duly cautioned and sworn, herewith depose and state:

1. I am a physician duly licensed to practice medicine in the State of Connecticut and I am a specialist in general surgery. I was duly licensed to practice medicine in the State of Connecticut in 1946 and have been engaged in the practice of medicine and surgery in the City of Milford since 1946.

2. I am president of the Medical Staff of The Milford Hospital, which is a position equivalent to being Chief of Staff. I have been acting in that capacity since 1972.

3. I am personally familiar with the application of Allen P. Schlein, filed June 3, 1973. I have reviewed the entire correspondence, transcript of hearings, and exhibits appended to the affidavit of George R. Plaskowitz. Furthermore, I am familiar with the provisions of the

Medical Staff By-Laws and Rules and Regulations relating to hearings relating to the denial of applications, and I have further read the affidavit of George R. Plaskowitz.

4. I was personally present at the meetings of the Medical Staff of October 5, 1973, December 7, 1973, January 22, 1974 and April 15, 1974. I personally heard the arguments of those that favored the application and those that denied the application. Furthermore, I was commissioned to attempt to obtain additional information from practitioners in the Bridgeport area who were familiar with Dr. Schlein's application on or about October 5, 1973, after the first denial by the Medical Staff.

5. I am in accord with the facts as recited by George R. Plaskowitz with respect to the meticulous care and attention that has been accorded Dr. Schlein's application. In particular, I affirm that all of the procedural advantages and rights set forth in Mr. Plaskowitz's affidavit at paragraph 11 have been accorded and granted to Dr. Schlein.

6. As to the substance of the reasons for Dr. Schlein's denial, it was the opinion of the majority of the Medical Staff that Dr. Schlein's tempestuous and temperamental behavior on occasion demonstrated a lack of maturity and judgment with respect to the ability to get along well with others, and in particular, with other members of Medical Staffs with whom he had practiced. It

was the opinion of the Medical Staff that the evaluations of his recent staff experience at the Park City Hospital in Bridgeport and at St. Vincent's Hospital were essentially negative.

7. It was the opinion of the Medical Staff that Dr. Schlein's pattern of behavior was abrasive with respect to working well with others.

8. Our counsel has shown to me a portion of a decision rendered in a similar case in the matter of Shulman v. Washington Hospital Center, 222 F.Sup. 59 at 64 (D.C. 1963). In that opinion, the Judge makes the following statement:

> "Without regard to the absence of any legal liability, the Hospital in admitting a physician or surgeon to its facility, extends a moral imprimatur to him in the eyes of the public. Moreover, not all professional men have a personality that enables them to work in harmony with others, and to inspire confidence in their fellows and in patients. These factors are of importance and here, too, there is room for selection. In matters such as these, the Courts are not in a position to substitute their judgments for that of professional groups."

9. I am in full accord with this statement and believe that the statement describes accurately the reasons for the denial of Dr. Schlein's privileges at The Milford Hospital.

C. J. LIPKOFF, M.D.

Subscribed and sworn to before me this 13th day of August, 1974.

Stephen E. Ronai

Stephen E. Ronai
NOTARY PUBLIC

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D. :
Plaintiff :
:
VS. : CIVIL NO. N-74-169
:
THE MILFORD HOSPITAL, INC. :
a Connecticut corporation :
Defendant :

AFFIDAVIT OF GEORGE R. PLASKOWITZ, ADMINISTRATOR IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY INJUNCTION

I, GEORGE R. PLASKOWITZ, being duly cautioned and sworn, herewith depose and state:

1. I am the administrator of The Milford Hospital, Inc. and have been acting in such capacity since 1966.

2. I have previously executed an affidavit in this action in order to acquaint the Court with facts sufficient to support our counsel's motion to dismiss the action on the ground that the Milford Hospital is a private corporation and as such, was not acting under "color or state law" in denying the application of Allen P. Schlein for privileges. Since the execution of that affidavit, I have been informed by my counsel that this Court may also entertain on the date of the dismissal hearing a further hearing with respect to the Plaintiff's motion for a preliminary injunction. I have reviewed copies of the complaint in this action, and of the Plaintiff's brief in support of his motion for injunction,

together with the copy of the affidavit of Allen P. Schlein. While I re-affirm my original statement that the action of The Milford Hospital is the action of a private non-stock corporation, I am submitting this affidavit in the event that the Court does not dismiss the action for lack of subject matter jurisdiction and passes thereafter, to a review of the procedure and the substance of Dr. Schlein's denial.

3. In the event that the Court considers the issue of whether or not Dr. Schlein received due process in the investigatory and hearing procedure, I make this affidavit and will address myself in detail to the review of the procedure followed by the Credentials Committee, by the Ad Hoc Hearing Committee, by myself and by the Governing Board of the Hospital acting as an Appellate Body with respect to Dr. Schlein's application. To further assist the Court, I have requested counsel to annex to this affidavit all documentary evidence which was considered by the respective committees pursuant to the Medical Staff By-Laws of The Milford Hospital with respect to this decision. These documents include correspondence; transcript of minutes of meetings; transcribed notes and telephone conversations and in two specific instances, the verbatim transcript of hearings held by the Ad Hoc Committee of the Milford Hospital Medical Staff on January 3, 1974, and the verbatim transcript of the hearing held by the Board of Directors

Executive Committee, sitting as an Appellate Body of February 27, 1974. Also annexed hereto is a copy of the By-Laws, Rules and Regulations of the Medical Staff of Milford Hospital (effective October 6, 1972), which was followed and operative throughout these proceedings.

4. During the course of these proceedings, dating from Dr. Schlein's application of June 7, 1973 to the date of my letter to Dr. Schlein on April 25, 1974, informing him of the action of the Appellate Review Committee, it is my conclusion that the Medical Staff and its duly delegated committees, as well as the Board of Directors and its duly delegated committees, attempted to deal with Dr. Schlein in a manner so as to make the procedure and the determination of the facts herein meaningful to him. In the course of the investigation and hearing procedure, I was advised by counsel that a fair solution to the complex problem involved could be sought only if the elements of due process were carefully and scrupulously followed. The following legal standard, which was communicated to me by our General Counsel, was the standard which the Medical Staff, Board of Directors and its delegate bodies attempted to use:

> "/W/e proceed from well settled principles. Due process requirements for a fair hearing vary according to the circumstances and must be adapted to particular situations...but the controlling principle is that the hearing must be meaningful ...which we understand to mean a hearing that affords a reasonable opportunity to correct error...In other words, we must ascertain whether the procedures employed at the corporate

staff hearing provided for '...the protection of the individual against arbitrary action...' Citta v. Delaware Valley Hospital Association, 313 F.sup., 301, 310-311 (E.D.Pa. 1970); Ludlam: Physician-Hospital Relations: LAW AND CONTEMPORARY PROBLEMS (Health Care Symposium; Part 2 Autumn 1970, 880 at 888).

5. I have read Dr. Schlein's allegations in his affidavit and in particular, paragraphs 12 through 27, in which Dr. Schlein claims that in various paragraphs that he was treated unfairly and not in accordance with the standards of due process. It is my opinion that under the complex set of circumstances, the Medical Staff, its delegate committees and the Board of Directors did act fairly and in conformity with the standards of due process. For example, on October 5, 1973, the Medical Staff voted "not to approve" Dr. Schlein's application for privileges. Although this vote was taken upon a recommendation of the Credentials Committee which met on four occasions prior to the Medical Staff's vote, (i.e. June 22, 1973, August 23, 1973, September 13, 1973, October 3, 1973), the mixed reaction to the application by the Medical Staff was deemed by the undersigned to necessitate further investigation. Therefore, on October 5, 1973, I addressed a letter to one of Dr. Schlein's references, Mark Coventry, M.D. requesting a clarification of his recommendation. Dr. C. J. Lipkoff, President of the Hospital Medical Staff ("Chief of Staff") also sought to supplement the investigation further by requesting on October 10, 1973 further information from three orthopedic physicians who were purportedly familiar with Dr. Schlein as a result of his practice with them at the Park City Hospital, Bridgeport, Connecticut. (See letter of C. J. Lipkoff, October 10, 1973). Moreover, in an attempt

to be fair to Dr. Schlein, it was the opinion of the Executive Committee of the Board of Directors, acting as a delegate of the Board of Directors under the corporate by-laws, that the materials on which the Medical Staff relied on October 5, 1973 in denying privileges, were not "adequate" to deny Dr. Schlein privileges. Therefore, the Board of Directors Executive Committee referred the matter back to the Medical Staff for further consideration and review. (See letter of October 25, 1973 from George R. Plaskowitz to C. J. Lipkoff).

6. Dr. Schlein's affidavit is replete with references to his lack of notice of his alleged deficiencies, and of the hospital's failure to follow precisely the provisions of the Medical Staff By-Laws with respect to hearing and appellate review of a decision to deny privileges. Dr. Schlein is incorrect. For example, Dr. Schlein makes no reference to the November 23, 1973 meeting of the Credentials Committee, which was a face to face meeting with Dr. Schlein. The minutes of that Committee indicate "Dr. Schlein was appraised of his present status;". The minutes of that Credentials Committee also affirmed that Dr. Schlein stated that "he spent almost an hour with the hospital administrator and that he would be unable to divulge the contents of that discussion." The minutes of that meeting indicate that it occupied one and one-half hours of which one hour

was spent discussing the matter directly and openly with Dr. Schlein. It would appear that as a result of said meeting, Dr. Schlein was acquainted with the nature of the charges against him so that prior to that date, he could in anticipation of the January 3, 1974 hearing before the Ad Hoc Committee prepared his defense. (See minutes of Credentials Committee, November 23, 1973).

7. Dr. Schlein complained in paragraph 15 of his affidavit that "the reasons set forth for the denial of privileges did not set forth in concise language the subject matter and acts that were considered in making the adverse recommendation by the Medical Staff". Dr. Schlein on November 23, 1973, was made personally familiar with at least the adverse letter of Dr. Camarda. Dr. Schlein was also made aware by the Credentials Committee on November 23, 1973 of the incident involving the "throwing of an instrument" at the Park City Hospital.

8. In a further attempt to acquaint Dr. Schlein with the nature of the proceeding, the relevant section of the minutes of the Credentials Committee meeting of December 6, 1973 were sent to Dr. Schlein on or about December 7, 1973.

9. Dr. Schlein complains of the absence of counsel at the Ad Hoc Committee hearing of the Medical Staff on January 3, 1974. The Ad Hoc Committee hearing was not the ultimate decision making body. The final decision and the one that became operative with respect to the

final denial of privileges was the hearing before the Executive Committee of the Board of Directors sitting as an appellate review body on February 27, 1974. At that hearing, when Dr Schlein's rights were to be finally and adversely affected, he was given the right to counsel and an opportunity to present all of the evidence at his disposal. Further detail and description of the appellate review hearing will be set forth below in a separate paragraph of this affidavit. Suffice it to say at this point that the Ad Hoc Committee procedure was devised by the By-Laws "for the purpose of resolving on an intra-professional basis, matters bearing on professional competency and conduct". (See Medical Staff By-Laws VIII(5)(j)). Although Dr. Schlein wished to have counsel at the Ad Hoc Committee meeting, it was the judgment of the Ad Hoc Committee that the spirit of professional consideration would be better served if neither party had counsel. It is our opinion that so long as Dr. Schlein at the ultimate hearing date, i.e. before the Appellate Review Body, was informed of all of the evidence bearing on his application and had counsel at that time, then the absence of counsel at the Ad Hoc Hearing Committee is of no legal significance to him, so long as it did not damage his preparation for the Appellate Review Hearing.

10. With respect to the Appellate Review, the Appellate Review Committee was guided by the decision of

its counsel, which appears in a February 7, 1974 letter to me, to the effect that "...it would appear that every procedural advantage that is consistent with the concept of fair play and due process should be afforded the applicant". (See letter of February 7, 1974 from Stephen E. Ronai to George R. Plaskowitz). Based on that recommendation, on February 14, 1974, in response to letters from Dr. Schlein's counsel, Dr. Schlein was informed by me of the date of the Appellate Review hearing to be February 27, 1974 at 2:30 P.M. in the auditorium of the Hospital. Dr. Schlein's request for oral argument was granted as was his request for the presence of counsel at the hearing. Of further importance is the fact that while the Medical Staff By-Laws provide (see Article VIII(6)(g)) that new or additional matters not raised in the previous hearings are to be introduced at the Appellate Review only under "unusual circumstances", Dr. Schlein and his counsel were granted the right to introduce additional testimony at the hearing freely and without restriction. Therefore, although the Medical Staff and the Board of Directors was limited in its consideration to the evidence in the record up to and including February 27, 1974, Mr. Coughlin, as counsel to Dr. Schlein, was permitted to introduce additional matters which had not been reviewed and had not been seen by the Medical Staff and by the Appellate Review Committee.

11. Furthermore, on February 20, 1974, as appears in the Exhibits annexed to this affidavit, counsel for

Dr. Schlein was provided with copies of each and every document considered by the Credentials Committee and the Medical Staff and by the Board of Directors with respect to the application. (See List of Documents hand delivered to Dr. Schlein's counsel on February 20, 1974 appended hereto as an Exhibit to this affidavit). Dr. Schlein then had each and every piece of evidence to examine approximately one week before the hearing in order to prepare himself for the presentation of documents or testimony to support his application. Furthermore, Mr. Coughlin, Dr. Schlein's counsel, acknowledged receipt of all of these documents prior to the date of hearing. (See transcript of hearing; Appellate Review Committee February 27, 1974 at page 10).

12. Dr. Schlein further complains in his affidavit that he was denied the right to submit evidence, and to cross-examine witnesses at the time of the hearing which is contrary to the By-Laws. Dr. Schlein was made aware by our counsel that neither the Board of Directors nor the Medical Staff had legal power under the By-Laws to issue subpoenas to compel the attendance of witnesses or to compel testimony. Both sides were on the same footing: the determination of the complex issue, because of the various areas of the country in which Dr. Schlein had practiced, had to, of necessity, be determined on the basis of the doctor's reputation as gleaned from documentary testimony, which was essentially hearsay. Furthermore, I have

examined the transcript of testimony and the documents appended here as an exhibit and nowhere do I find any formal request for Dr. Schlein to have us compel or attempt to compel the attendance of witnesses. (See transcript of hearing before Appellate Review Committee, 2/27/74 at page 70).

13. The review of the documents submitted herein as an exhibit indicate that scrupulous and careful attention was paid toward seeking a fair solution to the complex problem of granting to Dr. Schlein privileges at The Milford Hospital. A summary of the documents indicate that Dr. Schlein was granted the following rights:

a) Notice of the time and place of the hearing;

b) A hearing before property authorized body;

c) The right to appear in person before the hearing body;

d) The right to present witnesses and appropriate documents;

e) Notification of where and why he fell short, when refused appointment;

f) An appeal or final opportunity to rebut unfavorable evidence after obtaining copies of all unfavorable evidence;

g) The right to counsel at a crucial stage of the proceeding after counsel and the applicant had an opportunity to review and prepare themselves for the hearing.

14. Furthermore, specific findings were made concerning the areas in which the applicant fell short; notably "his ability to work with others, with sufficient adequacy to assure the Medical Staff and the governing body that any patient treated by /him/ in the hospital will be given a high quality of medical care,..." (See Medical Staff By-Laws, Article III, Sec. 2(1)).

15. There is substantial evidence in the record to support an adverse recommendation and Dr. Schlein was granted fair procedure.

GEORGE R. PLASKOWITZ, ADMINISTRATOR

Subscribed and sworn to before me this 13th day of August, 1974.

Stephen E. Ronai
Notary Public

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, MD *
*
Plaintiff *
*
VS. *
* CIVIL NO. N-74-169
THE MILFORD HOSPITAL, INC. *
a Connecticut corporation *
*
Defendant *

STIPULATION

The Plaintiff and the Defendant hereby agree and stipulate the following facts:

A. The following financial information concerning the Defendant's income and property has been taken from audited financial statements of the Milford Hospital, Inc. prepared by Ernst & Ernst certified public accountants:

1973	
book value of property	$ 6,138,000.00
net operating income	37,515.00
investment income	19,721.00
1972	
book value of property	5,926,749.00
net operating income	39,162.00
investment income	25,947.00
1971	
book value of property	5,799,291.00
net operating income	151,303.00
investment income	26,673.00

1970

book value of property	$ 2,359,233.00
net operating income	136,561.00
investment income	21,019.00

B. The Milford Hospital Inc. is a tax exempt corporation and as a result, is not subject to the folloiwng taxes:

1. real and personal property tax to the City of Milford levied at 70 percent of the fair market value at 42.80 mill rate.

2. federal corporate income tax at the rate of 22 percent for the first $25,000.00 of income and 48 percent of all amounts in excess thereof.

3. Connecticut State Corporate income tax at the rate of eight percent.

C. The following represents total government dollars for patient care for the years set forth:

	1970	1971	1972	1973
I. Total government dollars for patient care				
Medicare	705,893	873,555	1,122,746	1,058,020
other government (state, city, etc.)	18,621	47,422	117,997	104,580
Recapitulation of total government funds for patient care				
a. total government money for patient care	724,514	920,977	1,250,743	1,162,600
b. net revenue (including bad debts)	3,576,087	4,493,997	5,099,887	5,507,365
percentage of government money to total funds received $\frac{A}{B}$	20.3%	20.5%	24.5%	21.1%

II. Capital expenditures				
	175,650	3,521,706	205,311	237,932
III. Milford Hospital Fund, solicited donations from public				
	-0-	-0-	12,733	353,948
Milford Hospital Fund	-0-	-0-	-0-	148,127

THE PLAINTIFF

BY ______________________

HIS ATTORNEYS

THE DEFENDANT

BY ______________________

ITS ATTORNEYS

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D.	*	
	*	
Plaintiff	*	
	*	
VS.	*	CIVIL ACTION NO. N-74-169
	*	
THE MILFORD HOSPITAL, a Connecticut corporation	*	
	*	

AFFIDAVIT OF ALLEN P. SCHLEIN, M.D. IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I, Allen P. Schlein, being duly cautioned and sworn herewith, depose and state:

1. I am a physician duly licensed to practice medicine in the State of Connecticut and specialize in orthopedic surgery.

2. I maintain an office for the practice of my speciality in the City of Milford, State of Connecticut and Bridgeport, Connecticut.

3. I am presently acting chief of orthopedic surgery at Park City Hospital, Bridgeport, Connecticut.

4. I am familiar with the Hill-Burton Act and the requirements of the federal government thereunder.

5. I was shown by my counsel a letter from Harald M. Graning, M.D. Assistant Surgeon General of the Department of Health, Education and Welfare dated May 31, 1974. The letter was addressed to

my counsel who requested assurances required by the Hill-Burton Act in the case of Milford Hospital. The letter provides in part:

> "We are enclosing a list of the assurances which were included with Part I of the Hill-Burton application submitted by Milford Hospital for a project approved in 1969."

5. The assurance referred to in Dr. Graning's letter is attached to the Affidavit and made a part hereof.

6. The assurances require, in part:

1. That the facility will be operated and maintained in accordance with minimum standards prescribed by the State agency for the maintenance and operation of such facilitites;

2. That it will conform to all applicable requirements of the State plan and regulations;

3. That in the case of a community mental health center, the services to be provided by the facility, alone or in conjunction with other facilities owned or operated by the applicant, will be made available for a program providing principally for persons residing in a particular community or communitites in or near which such facility is to be situated at least the essential elements of comprehensive mental health services--i.e., inpatient services, outpatient services, partial hospitalization services (including at least day care services), emergency services provided 24 hours per day within one or more of the above services, and consultation and education services available to community agencies and professional personnel;

4. That the facility will furnish a community services and: (a) will furnish below cost or without charge a reasonable volume of services to persons unable to pay therefor; (b) will not furnish below cost or without charge a reasonable volume of services to persons unable to pay therefor, and the justification as required by General Instructions, page 5, is attached;

5. That all portions and services of the entire facility for the construction of which, or in connection with which, aid is sought, will be made available without discrimination on account of creed, and no professionally qualified person will be discriminated against on account of creed with respect to the privilege of professional practice in the facility.

7. To the best of my knowledge, the above assurances are required by all hospitals applying for and receiving Hill-Burton funds.

ALLEN P. SCHLEIN, M.D.

Sworn to and subscribed before me this 24th day of September, 1974.

JOHN J. COUGHLIN
Commissioner of the Superior Court

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH RESOURCES ADMINISTRATION
ROCKVILLE, MARYLAND 20852

BUREAU OF HEALTH RESOURCES DEVELOPMENT
Division of Facilities Utilization

MAY 31 1974

Mr. John J. Coughlin
Bennett, Kapusta and Coughlin
Attorneys at Law
75 Broad Street
Milford, Connecticut 06460

Dear Mr. Coughlin:

This is in reply to your letter of May 16 concerning assurances provided by Milford Hospital in its application for Hill-Burton funds.

We are enclosing a list of the assurances which were included with Part I of the Hill-Burton application submitted by Milford Hospital for a project approved in 1969.

Milford Hospital is a nonprofit facility. A nonprofit facility is defined in Title VI of the Public Health Service Act as "a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual." A public hospital is one owned by a unit of government such as a city, county or State.

Sincerely yours,

Harold M. Graning, M.D.
Assistant Surgeon General
Director

Enclosure

THE APPLICANT GIVES ASSURANCE

A. That it (or other public or nonprofit agency which is to operate the facility) has or will have a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period of not less than 50 years undisturbed use and possession for the purpose of the construction and operation of the facility;

B. That the Surgeon General's approval of the final working drawings and specifications, which conform to the general standard of construction and equipment, will be obtained before the project is advertised or placed on the market for bidding;

C. That it will perform actual construction work by the lump sum (fixed price) contract method; employ adequate methods of obtaining competitive bidding prior to awarding the construction contract, either by public advertising or circulating three or more bidders, and award the contract to the responsible bidder submitting the lowest acceptable bid; and will purchase all fixed equipment by adequate methods of competitive bidding (including such fixed equipment as is not purchased through the construction contract) and award the contract to the responsible bidder submitting the lowest acceptable bid, except that competitive bidding procedures need not be employed for the purchase of specific fixed equipment items which are not included in the construction contract where such action is found by the State agency and the Surgeon General, upon written justification by the applicant, to be required by the needs of the program.

D. That it will not enter into a construction contract or contracts for the project or a part thereof, the cost of which is in excess of the estimated cost approved in the application for that portion of the work covered by the plans and specifications, without the prior approval of the Surgeon General or Secretary;

E. That it will submit to the Surgeon General or Secretary for prior approval changes that substantially alter the scope of work, function, utilities or safety of the facility;

F. That it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications;

G. That it will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of the project, and permit audit of such records and accounts at any reasonable time;

H. That it will furnish progress reports and such other information as the Surgeon General may require;

I. That it will provide and maintain competent and adequate architectural or engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications;

J. That sufficient funds will be available to meet the non-federal share of the cost of constructing the facility;

K. That sufficient funds will be available when construction is completed to assure effective operation of the facility as approved;

L. (1) That any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the construction of the facility will be paid wages at rates not less than those prevailing on similar construction in the locality as determined under the Davis-Bacon Act (40 U.S.C. 276 et. seq.) and will receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any work week in excess of eight hours in any calendar work day or forty hours in the work week (40 U.S.C. 327-332); and

(2) That the following conditions and provisions will be included in all construction contracts:

(a) The provisions of Labor Standards for U.S. Public Health Service Construction Grant or Loan Programs pertaining to the Copeland Act (Anti-Kickback) Regulations and Labor Standards (prevailing rates of pay and overtime requirements) except in the case of contracts in the amount of $2,000.00 or less;

(b) The contractor shall furnish performance and payment bonds, each of which shall be in the full amount of the contract price, and shall maintain, during the life of the contract, adequate fire, workemen's compensation, public liability and property damage insurance;

(c) Representatives of the Surgeon General and State agency will have access at all reasonable times to work wherever it is in preparation or progress and the contractor shall provide proper facilities for such access and inspection;

M. That the facility will be operated and maintained in accordance with minimum standards prescribed by the State agency for the maintenance and operation of such facilities;

N. That it will conform to all the applicable requirements of the State plan and regulations;

O. That in the case of a community mental health center, the services to be provided by the facility, alone or in conjunction with other facilities owned or operated by the applicant, will be made available for a program providing principally for persons residing in a particular community or communities in or near which such facility is to be situated at least the essential elements of comprehensive mental health services--i.e., inpatient services, outpatient services, partial hospitalization services (including at least day care services), emergency services provided 24 hours per day within one or more of the above services, and consultation and education services available to community agencies and professional personnel;

P. That the facility will furnish a community service and:

(1) ☐ will furnish below cost or without charge a reasonable volume of services to persons unable to pay therefor;

(2) ☐ will NOT furnish below cost or without charge a reasonable volume of services to persons unable to pay therefor, and the justification as required by General Instructions, page 5, is attached;

Q. That all portions and services of the entire facility for the construction of which, or in connection with which, aid is sought, will be made available without discrimination on account of creed, and no professionally qualified person will be discriminated against on account of creed with respect to the privilege of professional practice in the facility.

R. The applicant hereby agrees that it will incorporate or cause to be incorporated into all construction contracts or subcontracts in excess of $10,000.00 paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, the following provisions as prescribed in Section 202 of Executive Order 11246, of September 24, 1965:

"During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, HOWEVER, That in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

The applicant also agrees that it will be bound by the above equal opportunity clause in any Federally assisted construction work it performs itself other than through the permanent work force directly employed by an agency of government.

The applicant further agrees (1) to assist and cooperate actively with the administering department or agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations, and relevant orders of the Secretary, (2) to obtain and to furnish to the administering department or agency and to the Secretary of Labor such information as they may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor or the administering department or agency pursuant to Part II, Subpart D, of Executive Order 11246, and (4) to refrain from entering into any contract subject to Executive Order 11246, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of Executive Order 11246.

In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering department or agency may take any or all of the following actions; (1) cancel, terminate, or suspend in whole or in part the grant, contract, or other arrangement with such applicant with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings.

S. That it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulations of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effecuate this agreement.

FILED
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U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN SCHLEIN, M.D. :

V. : **CIVIL NO. N-74-169**

THE MILFORD HOSPITAL :

MEMORANDUM OF DECISION ON DEFENDANT'S MOTION TO DISMISS

This motion to dismiss requires determination of the contours of state action in the context of a hospital's decision to deny staff privileges to a physician. Plaintiff Allen Schlein is a physician and orthopedic surgeon licensed to practice medicine in Connecticut. He maintains offices in Bridgeport and Milford and is Chief of Orthopedics at Bridgeport's Park City Hospital. Two other Bridgeport hospitals have granted him staff privileges. Plaintiff's practice in the Milford area led him to apply for staff privileges at defendant Milford Hospital, a "private" institution, at least in the sense that it is not owned or operated by a governmental subdivision. After a long series of proceedings the hospital rejected plaintiff's application. Thereafter he brought this action under 42 U.S.C. § 1983, claiming that the hospital had reached its decision without due process of law and in an arbitrary and capricious manner.

Defendant's motion to dismiss raises the jurisdictional issue of whether the hospital's activities are state action to which Fourteenth Amendment limitations apply.

Plaintiff alleges state action on a number of grounds that were considered and rejected in Barrett v. United Hospital, 376 F.Supp. 791 (S.D. N.Y. 1974). In an extensive opinion Judge Bauman properly recognized that under this Circuit's exacting view of state action, neither receipt of Hill-Burton funds nor comprehensive state regulation of hospitals is sufficient to impose Fourteenth Amendment limitations on decisions to deny staff privileges. See also Mulvihill v. Julia L. Butterfield Memorial Hospital, 329 F.Supp. 1020 (S.D. N.Y. 1971). However, the Barrett decision did not consider the significance of the State's activity in licensing both hospitals and doctors. Plaintiff alleges circumstances, which, if proved at trial, would establish that the hospital's role in relationship to both licensing systems constitutes state action.

Connecticut requires a license for anyone wishing to "establish, conduct, operate or maintain" a hospital. Conn. Gen. Stat. § 19-33. Among the factors to be considered in issuing licenses is the "demonstrable need for such institutions." Conn. Gen. Stat. § 19-36. The State thus determines whether there will be hospitals and how many there will be in a particular area. To date, only the defendant hospital has been licensed in the Milford area.

With respect to physician licensing, Connecticut, like other states, requires doctors to obtain a license before becoming eligible to practice medicine. Conn. Gen. Stat. § 20-8 et seq. While Dr. Schlein's license permits him to practice medicine anywhere in the State, the nature of his profession and, according to his complaint, of his specialty, requires that he enjoy staff privileges at a hospital in order to deliver the full range of services that he is licensed to perform. By deciding whether to extend staff privileges, hospitals determine important aspects of the scope of a physician's license. This determination has substantive and, in this case, geographic implications. The decision to grant staff privileges is quite unlike a hiring decision whereby candidates compete for a limited number of opportunities. Cf. Board of Regents v. Roth, 408 U.S. 564 (1972). Moreover, the denial of staff privileges may seriously damage a physician's "standing and associations" in his professional community. Id. at 573. To the extent that plaintiff's Milford patients require treatment at a hospital, the denial of staff privileges at the only licensed hospital in the area limits the geographic scope of his physician's license. Cf. Foster v. Mobile County Hospital Board, 397 F.2d 227 (5th Cir. 1968).

This is not a situation where a private entity has denied a prerequisite to obtaining a state license, such as a law school's decision to withhold a diploma required for bar membership. Cf. Grafton v. Brooklyn Law School, 478 F.2d 1137 (2d Cir. 1973).

It may well be that the Fourteenth Amendment does not limit the procedures for decision-making by every entity that enjoys a degree of state-authorized monopoly. Compare

Moose Lodge v. Irvis, 407 U.S. 163 (1972), with Lavoie v. Bigwood, 457 F.2d 7 (1st Cir. 1972). There are a variety of contexts in which a State determines who is permitted to carry on a particular form of enterprise, and it is not infrequent for State authority to confer limited geographic monopolies. The grant of such authority, for example, to liquor outlets or truckers, does not invariably impose Fourteenth Amendment limitations on their activities generally, nor on their hiring of personnel. Nor are such limitations applicable to all decisions made by those with some capacity to affect the activity of a state-licensed professional. A country club's decision not to admit a lawyer or an accountant may well have some limiting effect upon the scope of a professional practice, without incurring due process limitations.

In this case, however, a private hospital, by virtue of its state licensing, has been given the authority to determine important aspects of the scope of the license required of a physician. State-authorized power is being used to determine the scope of state-created rights. Moreover, this is occurring in the context of a geographic monopoly that underscores both the significance of the hospital's power and the impact upon the physician's rights. A private entity cannot play such a pivotal role in the implementation of the State's regulatory authority without abiding by the procedural limitations that the Fourteenth Amendment imposes upon state action. The complaint sufficiently pleads state action to resist a motion to dismiss.

In order to obtain a preliminary injunction plaintiff must show both probable success on the merits and possible irreparable injury. Checker Motors Corporation v. Chrysler Corporation, 405 F.2d 319, 323 (2d Cir. 1969). As to the merits, plaintiff received a good deal of process, perhaps as much as was due. Before a final decision was reached, his application was considered and reconsidered by the hospital's Credentials Committee, Executive Committee, and medical staff. At one point Dr. Schlein requested and received an opportunity (not a part of the hospital's formal procedures) to appear before the Credentials Committee to refute adverse reports it had received. After the medical staff voted to deny him privileges, Dr. Schlein pursued the right granted him by the hospital's by-laws to a hearing before an ad hoc committee. Prior to the hearing, he received a written statement of the reasons for the staff's decision. And though he was not permitted counsel, he was represented by a doctor of his own choosing. He appealed that committee's decision, again as provided for in the by-laws, to the hospital's Executive Committee. The proceedings there were more de novo than appellate in nature, and plaintiff was allowed full legal representation. At both the ad hoc and Executive Committee meetings, no witnesses were called but plaintiff was given ample opportunity to comment on the written recommendations the hospital had received and to present letters that he himself had solicited.

Courts have repeatedly held that in comparable hospital staffing decisions the full array of procedural due process rights is unnecessary. Woodbury v. McKinnon, 447 F.2d 839 (5th Cir. 1971), approved a hearing concerning a staff member's reappointment in which his lawyer's role was confined to conferring with his client and in which no witnesses were called. In Don v. Okmulgee Memorial Hospital, 443 F.2d 234 (10th Cir. 1971), a doctor was denied membership on a hospital staff. Although no formal judicial or quasi-judicial hearing was held, the doctor and his lawyer met informally with the hospital board to discuss the matter. The Court found no due process violation in such proceedings. Cf. Citta v. Delaware Valley Hospital, 313 F.Supp. 301 (E.D. Pa. 1970). Milford hospital's procedures are no more likely to be found wanting.

Plaintiff claims that the hospital's decision not only violated procedural due process, but was arbitrary and capricious as well, by which he appears to mean that the decision was not based solely on medical competence. While the evidence before the various committees was conflicting, there were reports that expressed some reservations about Dr. Schlein's professional skills and his ability to work with others. The hospital is entitled to consider such factors, Sosa v. Board of Managers of Val Verde Memorial Hospital, 437 F.2d 173 (5th Cir. 1971); Woodbury v. McKinnon, supra, and "we are not free to substitute our judgment for that of the physicians and surgeons composing the Corporate Staff of the

Hospital." Citta v. Delaware Valley Hospital, supra, 313 F.Supp. at 313. The plaintiff is not likely to prevail on this theory either.

In any event, plaintiff's request for temporary relief goes well beyond the traditional purposes of a preliminary injunction. He is not seeking to maintain the status quo or return to the last uncontested position between the parties. Warner Bros. Pictures v. Gittone, 110 F.2d 292 (3d Cir. 1940).

Accordingly, the defendant's motion to dismiss the complaint and the plaintiff's motion for a preliminary injunction are both denied.

Dated at New Haven, Connecticut, this 6 day of November, 1974.

Jon O. Newman
Jon O. Newman
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D. *
Plaintiff *
* CIVIL NO. N-74-169
VS. *
*
THE MILFORD HOSPITAL, INC. *
*
Defendant *

REQUEST FOR ADMISSION OF FACTS

TO: Jeremy Zimmerman, Esq.
Wiggin & Dana
205 Church Street
New Haven, Connecticut

Stephen E. Ronai, Esq.
Gitlitz, Ronai & Berchem
81 Broad Street
Milford, Connecticut

PLEASE TAKE NOTICE that the plaintiff hereby requests the defendant, pursuant to Rule 36 of the Federal Rules of Civil Procedure, to admit within ten days after service of this request, for the purpose of the above entitled action only, and subject to all pertinent objections to admissibility which may be interposed at trial, the truth of the following facts:

1. Plaintiff is a licensed physician and orthopedic surgeon in the State of Connecticut, California, Illinois and Minnesota.

2. Plaintiff is a qualified and competent orthopedic surgeon.

3. Plaintiff has met the requirements of the American Board of Orthopedic Surgery and was certified by that Board on September 22, 1972.

4. Plaintiff received his MD degree from Jefferson Medical College, Philadelphia, Pennsylvania, a recognized school in medicine.

ENNETT, KAPUSTA
& COUGHLIN
ATTORNEYS AT LAW
75 BROAD STREET
ILFORD, CONN. 06460
(203) 874-6773

5. The plaintiff interned at the Philadelphia General Hospital and successfully completed his internship on June 1966.

6. The plaintiff successfully completed his residency in the specialty of orthopedic surgery at Mayo Foundation, Rochester, Minnesota, in July 1970.

7. Plaintiff previously held hospital staff privileges at Lewis A. Wiess Memorial Hospital, Chicago, Illinois.

8. Plaintiff taught at the University of Illinois Medical School as a clinical associate for two years.

9. The plaintiff has the qualifications, background and experience as per attached statement of same which is incorporated herein.

10. Plaintiff is Chief of Staff in Orthopedics at Park City Hospital in Bridgeport.

11. Plaintiff has privileges at St. Vincent's Hospital, Bridgeport Hospital and Park City Hospital, all in the City of Bridgeport, Connecticut.

12. The Milford Hospital operates under and by virtue of a license from the State of Connecticut and without such license, could not carry on the business of a hospital.

13. Plaintiff has numerous patients who are residents of the City of Milford and entitledto use of the hospital facilities.

14. The Milford Hospital is the only hospital licensed in the Milford area.

15. The Milford Hospital, by determining whether to extend staff privileges to applicants, determines important aspects of a physican's license.

16. The denial of privileges at the only licensed hospital in the Milford area limits the geographic scope of the plaintiff's license.

17. The State of Connecticut regularly conducts an inspection of the Milford Hospital to determine that it meets the standards of the State Statutes and the State Health Code which inspection concerns itself with every aspect of the operation of the hospital to insure minimum standards are maintained as a prerequisite to the granting of a license.

18. The inspection by the State of Connecticut involves the quality of care and physician care within the Milford Hospital.

19. The Milford Hospital has received substantial financial benefits under the Hill-Burton Act 42 USC 291 et seq.

20. The Milford Hospital is subject to the controls established by section 249(f) of Social Security Amendments of 1972 (Bennett Amendment) 42 USC 1320(c)-19 (supplemental II 1972)

21. The Milford Hospital is part of a statewide health plan care system established by the State of Connecticut in furtherance of the Hill-Burton Act.

22. No other hospital may be built in the same geographical area as the Milford Hospital without the prior approval of the State of Connecticut and/or the Department of Health, Education and Welfare.

23. Milford Hospital has a geographical monopoly on health care in the Milford area.

24. The Milford Hospital is subject to the controals established by Section   Connecticut General Statutes.

25. The Milford Hospital receives tax benefits as a non-profit organization.

26. The Milford Hospital hasno objective standards established for applicants for privileges.

27. The By-laws of the Milford Hospital, Article VIII, Section 5(1) provide that an applicant shall have the right to cross examine any witnesses, to challenge any witness and to rebut evidence against him.

28. The By-laws of the Milford Hospital staff provide that the Medical Staff has the burden of presenting facts sufficient to support their recommendation of denial of hospital staff privileges before the Ad Hoc Committee.

29. The Medical Staff at the Ad Hoc Committee hearing, did not present any facts in support of their adverse recommendation.

30. The Milford Hospital never produced any witnesses against the plaintiff.

31. The plaintiff was not permitted the right of cross examination of any witnesses in accordance with the By-Laws.

32. The plaintiff was not informed in concise language of any specific facts relied upon in denial of his application prior to the actual Ad Hoc hearing contrary to the By-Laws of the Milford Hospital.

33. The defendant never made a determination by test or otherwise, as to the competency of the plaintiff and has no procedures for doing so.

34. The defendant hospital did not have any factual evidence as to the plaintiff's ability to work with others, his character or complaints in other hospitals or institutions.

35. The defendant accepts the fact that Dr. Schlein is competent.

36. The defendant accepts the fact that Dr. Schlein is ethical.

Dated at Milford, Connecticut, this 9th day of June, 1975.

THE PLAINTIFF
BY BENNETT, KAPUSTA & COUGHLIN

John J. Coughlin, for the firm

CERTIFICATION

This is to certify that a copy of the foregoing was delivered to Jeremy Zimmerman, Esq., 205 Church Street, New Haven, Connecticut and Stephen E. Ronai, Esq., 81 Broad Street, Milford, Connecticut, this 9th day of June, 1975.

John J. Coughlin

1. Background and Experience

EDUCATION:	PRE-MEDICAL: STEVENS INSTITUTE OF TECHNOLOGY, HOBOKEN, NEW JERSEY B.S. 1961 MEDICAL: JEFFERSON MEDICAL COLLEGE PHILADELPHIA, PA. M.D. 1965
INTERSHIP:	PHILADELPHIA GENERAL HOSPITAL JUNE 1965 - JUNE 1966
RESIDENCY:	ORTHOPAEDIC SURGERY, MAYO FOUNDATION ROCHESTER, MINNESOTA JULY 1966 - JULY 1970
CERTIFICATION:	AMERICAN BOARD OF ORTHOPAEDIC SURGERY, SEPTEMBER 22, 1972
LICENSURES:	ILLINOIS, JULY 1970, LICENSE #36-43489 MINNESOTA, LICENSE # 17870 CALIFORNIA, LICENSE #618255 CONNECTICUT, LICENSE #15621
SPECIALTY AND PRACTICE:	ORTHOPAEDIC SURGERY
HOSPITAL STAFF:	LOUIS A. WEISS MEMORIAL HOSPITAL, CHICAGO, ILLINOIS PARK CITY HOSPITAL, BRIDGEPORT, CONN. BRIDGEPORT HOSPITAL, BRIDGEPORT, CONN. SAINT VINCENT'S HOSPITAL, BRIDGEPORT, CONN.
MILITARY SERVICE:	CAPTAIN, U. S. ARMY RESERVE
TEACHING:	CLINICAL ASSOCIATE, UNIVERSITY OF ILLINOIS, TWO YEARS
MEMBERSHIPS IN MEDICAL SOCIETIES:	AMERICAN MEDICAL ASSOCIATION THE CONNECTICUT MEDICAL ASSOCIATION CHICAGO MEDICAL SOCIETY ILLINOIS STATE MEDICAL SOCIETY AMERICAN ASSOCIATION OF AUTOMOTIVE MEDICINE

The foregoing educational, internship, residency, licensures, hospital staff, memberships, etc., amply demonstrate that the applicant, Allen P. Schlein, has the training and demonstrated competence to insure that any patient treated by him at Milford Hospital will be given a high quality of medical care and is qualified for membership on the Medical Staff of Milford Hospital.

2. Publications

In addition to the above, Dr. Allen P. Schlein, has published the following articles:

A-C Separations, Fracture Conf., Minnesota Medicine, Vol. 51, pp. 663-670, May, 1968

The Intoxicated Motor Vehicle Operator, Chapter in Symposium of Int. Cong. of Automotive and Traffic Safety, June 4, 1969

Performance of a Vitallium Olecranon Prosthesis; Case Report with 13 Year Follow-up, Journal of Bone and Joint Surgery, Vol, 52-A, No. 4, pp. 721-724

Modified Robert Jones Dressing, Proceedings of Mayo Clinic, August 1970

Book Review

Clinical Treatment of Back and Neck Pain, by Hans Kraus, M.D., McGraw Hill 1970, 156 pages

The Dual Mallet Finger. The British Society for Surgery of the Hand. Hutton, Essex, England

The Dual Finger Dislocation. British Society for Surgery of the Hand. Hutton, Essex, England

Fracture Conference, Birth Fractures, Minnesota Medicine, Vol. 55, pp. 471-474, May, 1972.

3. Instructional Experience

The applicant further has participated in instructional courses and meetings:

Annual meetings of the American Academy of Orthopaedic Surgeons

Chicago Orthopaedic Society Meetings, every six weeks

Therapeutic Sub-Task Force Group Meetings, Department of Pharacology, The Abraham Lincoln School of Medicine

a. Instructional courses offered by the American Academy of Orthopaedic Surgeons.

1) The Committee on Injuries: Difficult Reconstructive Problems of the Upper Limb, May 6 through 8, 1971, Nashville, Tennessee

2) The Committee on Arthritis: Reconstructive Surgery of the Arthritic Patient, May 12 through 14, 1971 - Philadelphia, Pa.

b. Society of Military Orthopaedic Surgeons, Bethesda Naval Hospital, Maryland, 1969

c. Society of Military Orthopaedic Surgeons, Travis Air Force Base, Calif., 1971

d. Armed Forces Institute of Pathology, Washington, D. C., February, 1972. Orthopaedic Pathology for Pathologists

e. Howmedic Symposium on Joint Arthroplasty in Conjunction with the American Academy of Orthopaedic Surgeons in Dallas, Texas, January 16, 1974

4. Research

Dr. Schlein has been actively involved in medical research and has:

a. designed a total elbow under Federal Drug Administration consideration;

b. designed total ankle presently under Federal Drug Administration consideration;

c. involved in current research to improve technique of insertion of acetabular preparation of total hip arthroplasty;

d. improved and simplified a halo device for use in cervical spinal injuries;

e. development of a practical battery operated Kirshner wire inserter.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

. . . . :

ALLEN P. SCHLEIN, M.D., Plaintiff	:	
VS.	:	CIVIL ACTION NO. N-74-169
THE MILFORD HOSPITAL, INC. Defendant	:	

. . . . :

RESPONSE TO REQUEST FOR ADMISSION OF FACTS

The Defendant, pursuant to Rule 36 Fed. R. Civ. P. herewith files its response to the request for admissions as follows:

1. Admitted.

2. Defendant objects on the grounds that the term "qualified and competent" is not defined and is therefore vague. However, notwithstanding the defendant's objection on the above ground, the defendant does admit that the substantive reasons or bases for the denial of the plaintiff's application by defendant was not on the ground of the unlikelihood or inability to perform technically surgical procedures according to the professional standard of conduct prevailing in the community, but on the grounds of his ability to work well with others and on the basis of his character.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Defendant admits that plaintiff held a courtesy appointment to the Department of Orthopedics at Weiss Hospital, Chicago, Illinois.

GITLITZ, RONAI
& BERCHEM, P.C.
COUNSELORS AT LAW
61 BROAD STREET
MILFORD, CONNECTICUT
06460

8. Defendant admits that plaintiff was on the staff of the University of Illinois as a Clinical Associate.

9. Defendant objects on the grounds that the question is not proper pursuant to the express terms of Fed. R. Civ. P. 36(a) which provides in pertinent part that "[e]ach matter of which admission is requested shall be separately set forth." It is unclear because of plaintiff's enumeration, which of the myriad facts defendant is being requested to admit. Wright & Miller, Federal Practice and PROCEDURE: Civil §2258.

10. Defendant admits that plaintiff has medical staff privileges at the Park City Hospital, Bridgeport, Connecticut.

11. Defendant admits that plaintiff has privileges in orthopedics at Park City Hospital but only courtesy privileges at both Bridgeport Hospital and St. Vincent's Hospital in Bridgeport, Connecticut.

12. Admitted.

13. Defendant cannot truthfully admit or deny that portion of the question relating to the residency of plaintiff's patients because it does not have access to plaintiff's patient records; defendant denies that plaintiff's patients are entitled to use of the hospital because only physicians with staff privileges may admit patients. They may, of course, be admitted by another physician with such privileges.

14. Defendant objects on the ground that the term "Milford area" is not defined and is therefore ambiguous. Defendant does admit that the defendant is the only general hospital licensed by the State Department of Health in the City of Milford, Connecticut.

15. Defendant objects on the ground that the phrase "determines important aspects of a physician's license" is incomprehensible. Defendant admits that the extension of staff privileges determines whether the plaintiff and others similarly situated may admit patients to defendant's hospital and whether the plaintiff and others similarly situated may use the defendant's facilities in care and treatment of patients.

16. Defendant denies that the denial of privileges limits the geographic scope of the plaintiff's license. Defendant repeats the text of the response to request #15 above and incorporates it by reference as if fully set forth herein.

17. Defendant admits that the State Department of Health conducts a "licensure survey" of the Hospital to determine whether it meets the requirements for short-term general hospitals set forth in the Public Health Code, Regulations of Connecticut State Agencies, §19-13-D3, and if it does meet such requirements, it automatically issues a new license to the Hospital. Defendant denies that such inspection is concerned with "every aspect of the operation of the Hospital".

18. Defendant objects on the grounds that plaintiff has not specified which state inspection is the subject of this request for admission. From time to time, various agencies of the state, e.g., the Department of Consumer Protection, the Department of Health, etc., inspect certain aspects of the operation of the Hospital. All inspections by State regulatory agencies are concerned with whether the Hospital has complied with the various regulations and requirements. If plaintiff is referring to the

licensure survey which is the subject of its request numbered 17, defendant denies that the Department of Health makes any investigation of the quality of care rendered by any individual medical practitioner at a short-term general hospital.

19. Defendant admits that the Hospital has received approximately $646,000 from Hill-Burton funds since the establishment of the Hill-Burton program.

20. Defendant admits that insofar as it receives federal funds for the provision of health care services it is subject to review pursuant to the Professional Standard Review Organizations (PSRO) amendments to the Social Security Act, Pub. L. 92-603, Title II §249F(b), 86 Stat. 1437. Defendant denies that the statutory provision cited by plaintiff, 42 U.S.C. §1320(c)-19, applies to it; such provision exempts certain Christian Science Sanitoriums from the PSRO provisions.

21. Defendant objects on the grounds that the term "statewide health plan care system" is not defined nor does defendant understand what it means in the context of this request for admission.

22. Plaintiff admits that before any hospital could be built in Connecticut, it would be necessary to secure approval from the Commission on Hospitals and Health Care, see §19-73(k), Conn. Gen. Stat. (1958 Rev.). Defendant denies that any approval for construction is required from the U.S. Department of Health, Educatio and Welfare.

23. Defendant denies that it has any geographic monopoly on hospital health care services. See §19-73(k) Conn. Gen. Stats. and the answer to request #22 above.

24. Defendant objects on the grounds that no citations are given to the General Statutes and the request is therefore incomprehensible.

25. Admitted.

26. Denied.

27. Defendant admits that Article VIII, Section 5i of the By-laws, Rules and Regulations of the Medical Staff of Milford Hospital provides as follows:

> "The affected practitioner shall have the following rights: to call and examine witnesses, to introduce written evidence, to cross-examine any witness on any matter relevant to the issues of the hearing, to challenge any witness and to rebut any evidence. If the practitioner does not testify in his own behalf, he may be called and examined as if under cross-examination."

28. Denied. Article VIII, Section 5h of the By-laws provides in pertinent part as follows:

> "[t]he Executive Committee, when its action has prompted the hearing, shall appoint one of its members or some other Medical Staff member to represent it at the hearing, to present facts in support of its adverse recommendation, and to examine witnesses. It shall be the obligation of such representative to present appropriate evidence in support of the adverse recommendation or decision, but the affected practitioner shall thereafter be responsible for supporting his challenge to the adverse recommendation or decision by an appropriate showing that the charges or grounds involved lack any factual basis or that such basis or any action based thereon is either arbitrary, unreasonable or capricious".

29. Denied. The transcribed minutes of the full hearing held by the Medical Staff Ad Hoc Hearing Committee fully disclose and set forth the facts supporting the adverse recommendation of the Committee.

30. Admitted. The Hospital was not required to present any witnesses. Neither the Hospital nor plaintiff called any witnesses.

31. Denied. The plaintiff's application, like the many others of physicians similarly situated, involves the evaluation of records and documents presented by other physicians and hearsay declarants who have known the applicants while they practiced or studied in areas remote geographically from the situs of the application. Thus, because the above general principle was applicable in the applicant's case, the Hospital called no witnesses and only because the Hospital did not present "live" witnesses was the plaintiff unable to cross-examine.

32. Denied.

33. Denied.

34. Denied.

35. Defendant objects on the grounds that the term "competent" is not defined and in the context of this case may have many alternative meanings. However, defendant does admit, and does herewith incorporate by reference the facts set forth in sentence #2 of the response to request #2.

36. Defendant objects on the grounds that the term "ethical" is not defined and in the context of this case may have many alternative meanings.

THE DEFENDANT
THE MILFORD HOSPITAL, INC.

By
Gitlitz, Ronai & Berchem, #22801
by Stephen E. Ronai
81 Broad Street
Milford, Connecticut 06460

THE DEFENDANT
THE MILFORD HOSPITAL, INC.

By
Wiggin & Dana, #
by Jeremy Zimmerman
205 Church Street
New Haven, Connecticut

CERTIFICATION

This is to certify that on the 8th day of July, 1975, a copy of the foregoing was mailed, postage prepaid, to John J. Coughlin, Jr., Esquire, Bennett, Kapusta & Coughlin, 75 Broad Street, Milford, Connecticut.

Stephen E. Ronai

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D.
Plaintiff
VS.
THE MILFORD HOSPITAL, INC.
Defendant

CIVIL ACTION NO. N-74-169

DEFENDANT'S ANSWERS TO INTERROGATORIES

The Defendant in the above entitled action herewith files, pursuant to Rule 33 Fed. R. Civ. P. and Rule 21 of the Rules of Procedure in the United States District Court for the District of Connecticut.

1. Please state the facts presented to the Defendant concerning Dr. Schlein's:
   a) clinical experience;
   b) competence;
   c) ability to get along with others;
   d) behavior at other hospitals;
   e) abrasive behavior.

A. The facts relating to categories a-e of question #1 are all of the facts presented to the Defendant in the Plaintiff's application of June 7, 1973 together with those facts set forth in the minutes of the Credentials Committee, the minutes of the Medical Staff's Executive Committee, the minutes of the Defendant's Board of Directors and in correspondence to the Defendant from physicians and representatives of hospitals who were familiar with the Plaintiff's previous terms of service, together with such information as appears in the transcript of the hearing of the Ad Hoc Hearing Committee of the Medical Staff of Milford Hospital (January 3,

GITLITZ, RONAI
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06460

JURIS NUMBER
22801

BEST COPY AVAILABLE

1974) and in the transcript of the hearing held by the Appellate Review Committee of the Board of Directors of Milford Hospital. Such facts as were presented to the Defendant appear in the documentary record on file in the Clerk's office of the Court, which encompass the entire record ot these proceedings from June 7, 1973 to April 25, 1974, and which were filed by the Defendant in support of its motion to dismiss, decided by this Court on November 6, 1974.

2. Please state the name and address of:
a) any patient with whom Dr. Schlein was unable to get along with;
b) any patient who complained about Dr. Schlein;
c) any nurse or hospital attendant with whom Dr. Schlein was unable to get along with;
d) any nurse or hospital attendant who complaint about Dr. Schlein.

A. a) No names of patients revealed in communications to the Defendant;

b) No names of patients revealed in communications to the Defendant;

c) In the minutes of the Ad Hoc Hearing Committee dated January 3, 1974, and on file, there is reference to an operating room nurse at the Park City Hospital, Nora Buckley, who witnessed Dr. Schlein throw an instrument in the operating room at the Park City Hospital, Bridgeport, Connecticut, on two occasions during a period of six months;

d) No name of any individual nurse or hospital attendant other than that set forth above.

3. Please state the facts upon which you relied to determine Dr. Schlein did not have the competence to ensure a high quality of care to patients at Milford Hospital.

A. The facts in the record on file was the factual basis for assessing whether the Plaintiff's past record related to the

Defendant hospital's primary duty to render quality care to patients. The facts in the record demonstrated that the Plaintiff was not able to work well with others and the facts failed to support the Plaintiff's ability to work together or in a team, thereby indicating a probability that his personality would be a handicapp that could severely hinder the effective treatment of patients. There is no issue with respect to the technical competence of the Plaintiff to perform orthopedic procedures.

4. Please state the facts upon which you relied to determine there existed "a pattern of abrasive behavior" with respect to fellow staff members at other hospitals.

A. The facts in the record on file relating to the Plaintiff's relationship with various employers or colleagues, i.e. the telephone response of Dr. Mark Coventry to Dr. Earl VanDerwerker, (7/30/73) that "there were times that Dr. Schlein was difficult to work with..."; Dr. Anthony Camarda's assessment; Dr. Irwin Siegal (see letter of 12/3/73 and deposition of Dr. Siegal dated 7/8/75); the apparent friction at St. Vincent's hospital engendered by Dr. Schlein's alleged involvement in advertising for Sports Medicine, Inc. (see transcript of Ad Hoc Hearing Committee, 3/3/74 pp. 95-99); and the inquiry to other orthopedists practicing in the Bridgeport community, i.e. Drs. Dworken and Glass, who failed to respond, indicated as a totality of positive and negative facts that the Plaintiff did indulge in a pattern of abrasive and uncooperative behavior with respect to fellow staff members at other hospitals, all of which contributed to the negative impression of many former colleagues.

5. Please state what are the "other facts" referred to in letter of December 28, 1973 from George Plaskowitz, Administrator of Milford Hospital, to Dr. Schlein, as stated in item #4 thereof.

A. The other facts referred to in the above dated letter were those facts which were allegations of ethical problems and other issues which, subsequent to the letter, were reviewed by the Ad Hoc Committee of the Milford Hospital's Medical Staff on January 3, 1974. These "other facts" concerned oral reports and potential ethical violations which were apparently resolved by the Ad Hoc Hearing Committee at its hearing.

6. Please state the facts upon which you made an evaluation of Dr. Schlein's professional conduct in current and past hospital association.

A. The Defendant made an evaluation of Dr. Schlein's conduct based upon response to inquiries from physicians which appear in the record on file with whom the Plaintiff had practiced prior to his application to the Milford Hospital, all as appears in the record from June 7, 1973 to April 16, 1974, as on file.

7. Please state the facts presented to support the adverse decision of the Medical Staff's Executive Committee as required by Article VIII, Section 5(h) of the Medical Staff By-Laws.

A. The adverse decision of the Defendant's Medical Staff Executive Committee was based upon correspondence from physicians who were familiar with the Plaintiff's prior term of service, and on the information contained in the record from June 7, 1973 to April 15, 1974 as on file.

8. Please state the facts upon which you relied to establish charges or grounds for denying Dr. Schlein's application.

A. The facts relied upon were those that appeared in the correspondence to the Defendant, in the minutes of the meetings of the Credentials Committee of the Medical Staff, in the minutes of the Executive Committee of the Medical Staff and in the minutes of the Medical Staff's meetings and in the transcripts of the hearings before the Ad Hoc Committee of the Medical Staff (Jan. 3, 1974), and the Appellate Review Committee of the Board of Directors of the Milford Hospital, records of telephone calls and all other supporting documents as appear in the record on file with this court.

9. Please state the facts you requested Dr. Schlein to challenge to show said charges lacked factual basis.

A. On February 20, 1974, Dr. Schlein's counsel was provided with copies of each and every document which related to information concerning the applicant on that date. Dr. Schlein's counsel was also given a copy of the minutes of the Ad Hoc Hearing Committee of the Medical Staff subsequent to January 3, 1975, but prior to the Appellate Review hearing held by a committee of the Board of Directors on March 20, 1974. Dr. Schlein's counsel was given, in a timely manner, copies of all correspondence, minutes and other documents setting forth claims with respect to Dr. Schlein's application (see "Written Statement of Applicant", 2/26/74).

10. State the reason the Executive Committee of Milford Hospital sent Dr. Schlein's application back to the Credentials Committee after the meeting of October 23, 1973.

A. The Executive Committee of the Milford Hospital received from its Chief of Staff at its October 23, 1973 meeting an oral recommendation for denial of privileges to Dr. Schlein made by the Medical Staff. The Chief of Staff, at that time, Dr. C. J. Lipkoff, was a voting member of the Executive Committee of the Board of Directors of the Hospital. No minutes or supporting documents were available to the Executive Committee to evaluate the then current recommendation of the Medical Staff. Based on the oral presentation to the Executive Committee, the Executive Committee was of the opinion that further evidence and documentation was required to be adduced by the Medical Staff prior to its final action.

11. State the reason the Executive Committee of Milford Hospital sent Dr. Schlein's application back to the Credentials Committee after the Appellate Review Hearing.

A. As the minutes of the Appellate Review Committee hearing of March 20, 1974 indicate (see file), the state of the evidence which formed the basis of the Medical Staff's recommendation to deny the Plaintiff privileges prior to March 20, 1974 had changed as a result of the withdrawal by Dr. Walter Shanley of his negative letter of November 29, 1973 and by Dr. Shanley's substitution of a subsequent letter dated February 8, 1974. Because of the change in the quality and quantity of the evidence upon which the Medical Staff's previous recommendation was founded, the Appellate Review Committee, in an abundance of caution, decided to refer the matter back to the Medical Staff for further consideration and review of the revised record.

12. Was any investigation undertaken to determine if the contents of letters considered by the Executive Committee in denying the application of Dr. Schlein had a foundation in fact?

A. The Executive Committee undertook no independent investigation of the facts underlying the letters and information submitted to it in writing. The Executive Committee relied upon the credibility, impartiality, professional integrity and good faith of the correspondents who understood the relevance of the Defendant's request and the great significance of the inquiry to both the physician, Dr. Schlein, and the Defendant hospital. The Defendant relied reasonably on the presumption that the correspondents had facts at their disposal based upon their familiarity with the applicant's past service.

13. If the answer to #12 is affirmative, please state, in detail, of what the investigation consisted.

A. Not applicable.

14. Was any investigation conducted by Defendant concerning the:

[illegible] ability of Dr. Schlein to get along with others?
[illegible] reputation of Dr. Schlein?
c) behavior of Dr. Schlein at past and current hospital affiliations?

A. Yes. In addition to the solicitation of letters from physicians, members of the Credentials Committee called physicians by telephone in the Bridgeport community to obtain information concerning Dr. Schlein's ability to get along with others, as to general reputation, and as to his behavior during past hospital affiliations in the Bridgeport community. Dr. Henry Coppes called a Dr. Liebowitz in the Bridgeport Community; Dr. Robert Kerin called Dr. Irwin Siegal in Chicago, and Dr. C. J. Lipkoff called Dr. MacEllis K. Glass and Dr. Donald Dworken to determine if a favorable commentary could be adduced. Furthermore, telephone calls were made to Dr. Irwin Siegal at the Strauss Medical Clinic in Chicago and to Dr. Mark B. Coventry of the Mayo Clinic (see record on file).

15. If the answer to #14 is affirmative, please state, in detail, of what the investigation consisted.

A. See above.

16. Please state the facts upon which the Credentials Committee relied in denying the application of Dr. Schlein on October 3, 1973, and December 6, 1973.

A. The Credentials Committee had the power merely to recommend the denial of Dr. Schlein's application to the entire Medical Staff for action thereon. The facts upon which the Credentials Committee relied in its recommendations of 10/3/73 and 12/6/73 were those documentary facts as appeared in the record on file as of that date.

17. Please state the dates upon which the Credentials Committee received any facts relied upon in acting upon Dr. Schlein's application.

A. All of the dates upon which the Credentials Committee received any facts appear in the letters to the Credentials Committee prior to each of the minutes setting forth its action and in the memoranda in the record, which record telephone conversations with communicants to the Credentials Committee.

18. Please state the facts upon which the Credentials Committee relied in making its final recommendation to reject the application of Dr. Schlein.

A. All of the facts set forth in the original application for appointment (June 7, 1973), in the minutes of the meetings of the Credentials Committee, the Medical Staff, the Ad Hoc Hearing Committee of the Medical Staff and the Appellate Review Committee of the Board of Directors of the Hospital and records of telephone calls and all other supporting documents as appear in the record of the proceedings before the Defendant from June 7, 1973 up to and including April 25, 1974.

19. Please state the facts upon which the Executive Committee of the Medical Board of Defendant relied in approving the recommendation of the Credentials Committee of December 6, 1973.

A. The facts as those which appear in the minutes of the meetings of the Medical Staff dated December 7, 1973 and all written documents, correspondence and memoranda, telephone calls which appear in the record of the proceedings of June 7, 1973 through December 6, 1973 as appear in the record on file.

20. Please state the dates upon which said Executive Committee of the Medical Staff and the Medical Staff received any facts relied upon in acting on Dr. Schlein's application after October 4, 1973.

A. All written facts, i.e. correspondence, reports, memoranda, minutes of meetings as appear in the record on file from October 4, 1973 up to and including April 17, 1974.

21. Please state the facts relied upon by said Executive Committee of the Medical Staff in approving the final recommendation of the Credentials Committee.

A. See #20 above.

22. Please state the facts relied upon by the Medical Staff in rejecting the application of Dr. Schlein for staff privileges.

A. See #20 above.

23. Please state if any charges were made to Defendant concerning the application of Dr. Schlein by:

a) any patient;
b) any doctor;
c) any hospital attendant;
d) any nurse.

A. a) None known;

b) While no "charges" were made by any physician, the deposition and letter of Dr. Irwin Siegal, the letter of Dr. Anthony Camarda and the statements of Dr. Mark Coventry, the questions raised by the Ad Hoc Hearing Committee re Sports Medicine, Inc., and the inability of the Defendant to obtain any response whatsoever from Doctors Glass and Dworken, Bridgeport orthopedists (see answer to #4 above), all raised questions and doubts with respect to a favorable recommendation;

c) None known;

d) See answer to #2(c) above.

24. If the answer to #23 is affirmative, please state as to each the:

a) date same was made;
b) the name and address of the person or persons making the charge;
c) the charge itself;
d) what investigation, if any, was conducted pertaining to each such charge;
e) the name and address of the person or persons in whose custody the charges are at the present time.

A. See answer to #23 above.

THE DEFENDANT
THE MILFORD HOSPITAL, INC.

By ______________________
George R. Plaskowitz, Administrator
He Being Duly Authorized

Subscribed and sworn to before me this 18th day of February, 1976.

____
Laura A. Rosenberg, Notary Public

CERTIFICATION

This is to certify that on the 18th day of February, 1976, a copy of the foregoing was mailed, postage prepaid, to Jeremy Zimmerman, Wiggin and Dana, 195 Church Street, New Haven, Connecticut and John J. Coughlin, Esquire, Bennett, Kapusta and Coughlin, 75 Broad Street, Milford, Connecticut.

Stephen E. Ronai

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D.

Plaintiff

VS. . CIVIL NO. N-74-169

THE MILFORD HOSPITAL, INC.,
a Connecticut corporation

Defendant

MOTION FOR SUMMARY JUDGMENT

The Defendant in the above entitled matter, herewith moves pursuant to Rule 56(c) Fed. R. Civ. P. for a summary judgment in that the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

THE DEFENDANT
THE MILFORD HOSPITAL, INC.

By Stephen E. Ronai
Gitlitz, Ronai & Berchem, P.C.
by Stephen E. Ronai, Esquire

By____________________
Wiggin & Dana
by Jeremy Zimmerman, Esquire
Juris #

CERTIFICATION

This is to certify that on the 15th day of April, 1976, a copy of the foregoing was mailed, postage prepaid, to John J. Coughlin, Esquire, 75 Broad Street, Milford, Connecticut 06460.

Stephen E. Ronai
Stephen E. Ronai

GITLITZ, RONAI
& BERCHEM, P.C.
COUNSELORS AT LAW
61 BROAD STREET
MILFORD, CONNECTICUT
06460

JURIS NUMBER
[illegible]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D.

Plaintiff

VS. CIVIL NO. N-74-169

THE MILFORD HOSPITAL, INC.,
a Connecticut corporation

Defendant

STATEMENT OF FACTS AS TO WHICH THERE IS NO GENUINE ISSUE PURSUANT TO RULE 11 OF THE LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

1. Plaintiff is a physician and orthopedic surgeon licensed to practice in the States of Connecticut, California, Illinois and Minnesota.

2. Plaintiff has met the requirements of the American Board of Orthopedic Surgeons and was certified by that Board on September 22, 1972.

3. Plaintiff received his M.D. degree from Jefferson Medical College, Philadelphia, Pennsylvania, a recognized school of medicine.

4. The Plaintiff interned at the Philadelphia General Hospital and successfully completed his internship in June, 1966.

5. The Plaintiff successfully completed his residency in the specialty of orthopedic surgery at the Mayo Foundation, Rochester, Minnesota, in July 1970.

6. Plaintiff held a courtesy appointment to the Department of Orthopedics at Weiss Hospital, Chicago, Illinois.

7. Plaintiff was on the staff of the University of Illinois hospital as a clinical associate.

8. Plaintiff received his pre-medical education at Stevens Institute of Technology, Hoboken, New Jersey (B.S. 1961) and attended medical school at Jefferson Medical College, Philadelphia, Pennsylvania (M.D. 1965).

9. Plaintiff had an internship at the Philadelphia General Hospital from June 1965 to June 1966.

10. Plaintiff served a residency at the Mayo Foundation in Orthopedic Surgery, Rochester, Minnesota, July 1966 - July 1970.

11. Plaintiff has published the following articles:

a) A-C Separations, Fracture Conf., Minnesota Medicine, Vol. 51, pp. 662-670, May, 1968

b) The Intoxicated Motor Vehicle Operator, Chapter in Symposium of Int. Cong. of Automotive and Traffic Safety, June 4, 1969

c) Performance of a Vitallium Olecranon Prosthesis; Case Report with 13 Year Folow-up, Journal of Bone and Joint Surgery, Vol. 52-A, No. 4, pp. 721-724

d) Modified Robert Jones Dressing, Proceedings of Mayo Clinic, August 1970

12. The Plaintiff Allen P. Schlein has written and published the following book reviews:

a) Clinical Treatment and Back and Neck Pain, by Hans Kraus, M.D., McGraw Hill 1970, 156 pages

b) The Dual Mallet Finger. The British Society for Surgery of the Hand. Hutton, Essex, England

c) The Dual Finger Dislocation. British Society for Surgery of the Hand. Hutton, Essex, England

d) Fracture Conference, Birth Fractures, Minnesota Medicine, Vol. 55, pp. 471-474, May, 1972.

13. The Plaintiff has active medical staff privileges at the Park City Hospital, Bridgeport, Connecticut, but only courtesy privileges at both Bridgeport Hospital and St. Vincent's Hospital, Bridgeport, Connecticut.

14. The Milford Hospital, Inc., licensed by the State

Department of Health pursuant to the Connecticut General Statutes and the provisions of the Public Health Code, i.e. §19-13(D)(3) as a short term general hospital.

15. Such licensure is a necessary pre-condition to the operation of The Milford Hospital.

16. The Milford Hospital is the only short-term general hospital possessing a license from the State Department of Health located in the City of Milford, Connecticut.

17. The determination and grant of staff privileges by the Defendant Milford Hospital determines whether the Plaintiff and others similarly situated may admit patients to the hospital and whether the Plaintiff and others similarly situated may use the Defendant Hospital's facilities in the care and treatment of patients.

18. The State Department of Health conducts a "licensure survey" to all short-term general hospitals and other health care institutions licensed by the State of Connecticut in order to determine whether they continually meet the requirements of the Public Health Code, i.e. regulations of the State of Connecticut, §19-13(D)(3). Since the establishment and inception of the Hill-Burton program, The Milford Hospital, Inc. has received $646,000 in Hill-Burton funds distributed on the following dates and in the following amounts:

1968 - New wing and emergency room facility ($400,000 Hill-Burton out of $ 3,300,000)

1963 - Maternity wing ($150,000 Hill-Burton out of $600,000)

1961 - Memorial wing ($96,000 out of $400,000)

19. The Defendant Hospital, as a recipient of federal funds for the provision of health care services is subject to the

Professional Standards Review Organization amendments (PSRO to the Social Security Act, PL 92-603, Title II, §249(F)(b), 86 Stat. 1437).

20. Prior to commencing the construction of a health care facility in the City of Milford or in any other town or city in the State of Connecticut, it is necessary to obtain approval for said capital construction project from the Commission on Hospitals and Health Care pursuant to the provisions of §19-73(L)(M) of the Connecticut General Statutes.

21. The Milford Hospital received real and personal property tax exemptions from the City of Milford and also receives other tax benefits as a tax-exempt charitable organization.

22. The Milford Hospital, Inc. is a private, non-profit corporation organized and existing pursuant to the Connecticut Non-Stock Corporation Act.

23. The business and affairs of the Corporation are conducted by a Board of Trustees who are elected pursuant to the provisions of the by-laws of the Board of Directors by the corporators or members of the Corporation.

24. The Board of Directors consists of 21 persons. All but four, the Mayor of the City of Milford, two physicians from the Staff and the President of the Hospital Auxillary, conduct their own private businesses as their major career effort and serve on the Board of The Milford Hospital as a public service and as a contribution to the community. The by-laws of The Milford Hospital, Inc., previously submitted as Exhibit B to the affidavit of George R. Plaskowitz, dated August 6, 1974, provide in Article IX with respect to the selection of the professional staff as

follows:

(see Article IX of the by-laws of The Milford Hospital, Inc. annexed hereto as an exhibit)

25. In accordance with Article IX of the by-laws relating to the selection of the Medical Staff, the Medical Staff of The Milford Hospital has adopted, as of November 21, 1972, by-laws, rules and regulations of the Medical Staff of The Milford Hospital (see by-laws, rules and regulations of the Medical Staff of The Milford Hospital originally submitted as an exhibit in conjunction with Plaintiff's Motion for Preliminary Injunction).

26. The preamble to the by-laws, rules and regulations of the Medical Staff of Milford Hospital provide:

> "Recognizing that the Medical Staff is responsible for the quality of medical care in the Hospital and must accept and assume this responsibility, subject to the ultimate authority of the Hospital Governing Body and that the best interests of the patient are protected by concerted effort, the physicians and dentists and allied professional personnel practicing in Milford Hospital hereby organize themselves in conformity with the Bylaws, Rules and Regulations hereinafter stated, to which they individually and severally subscribe."

27. The above by-laws of the Medical Staff of Milford Hospital have been adopted from a model recommended by the Joint Commission on Accreditation of Hospitals of the American Hospital Association, which model is in use in many hospitals throughout the United States.

28. The general procedure for the determination and grant of staff privileges at Milford Hospital involves the processing of a physician's application through various stages, i.e. an application is first filed with the Administrator, then referred to the Medical Staff which has a delegate committee, i.e. The Credentials Committee, which investigates, reviews and therefore

makes a recommendation to the Medical Staff. Thereafter, the Medical Staff recommends appointment or non-appointment to the Board of Directors which has the ultimate authority (see Article III, Section 5, subsection 1-7).

29. Article III, Section 1 of the bylaws, rules and regulations of the Medical Staff of Milford Hospital provides as follows:

> "Section 1. Nature of Medical Staff Membership. Membership on the Medical Staff of the Milford Hospital is a privilege which shall be extended only to professionally competent practitioners who continuously meet the qualifications, standards and requirements set forth in these Bylaws".

30. Article III, Section 2 of the Bylaws, Rules and Regulations of the Medical Staff of Milford Hospital with respect to minimum qualifications provide as follows:

> "Section 2. Minimum Qualifications. Only physicians and dentists licensed to practice in the State of Connecticut, who can document their background, experience, training and demonstrated competence, their adherence to the ethics of their profession, their good reputation, and their ability to work with others, with sufficient adequacy to assure the medical staff and the governing body that any patient treated by them in the Hospital will be given a high quality of medical care, shall be qualified for membership on the Medical Staff."

31. The Bylaws, Rules and Regulations of the Medical Staff of Milford Hospital provide in Article III, Section 5, subsection 1(b) as follows:

> "The applicant shall have the burden of producing adequate information for a proper evaluation of his competence, character, ethics and other qualifications, and for resolving any doubts about such qualifications."

32. Article III, Section 5, subsection 3 of the Bylaws, Rules and Regulations of the Medical Staff provide as follows:

> "The Credentials Committee shall investigate the character, qualifications, references, and standing of the applicant and shall submit a report of findings to the Medical Staff as soon as possible, and in all cases within three months, recommending that the application be accepted, deferred or rejected..."

33. Article VIII, Sections 1-7 provide an aggrieved practitioner who has received an adverse recommendation with respect to his application for staff privileges at Milford Hospital to obtain a hearing before an Ad Hoc Hearing Committee or Inter-professional Committee of the Medical Staff with respect to the adverse recommendation. Said rules and regulations further provide in Article VIII, Section 5, with respect to the conduct of the hearing to provide an aggrieved practitioner with the right to call and examine witnesses, to introduce written evidence, to cross-examine witnesses on any matter relevant to the issue of the hearing, to challenge witnesses and to rebut evidence (see Article VIII, Section 5(i)).

34. The Bylaws, Rules and Regulations of the Medical Staff of The Milford Hospital, Inc. also provide for the right of appeal of an adverse recommendation of the Medical Staff subsequent to a hearing before the Ad Hoc Hearing Committee and for an appeal to the governing body (see Article VIII, Section 6(a)-(j)).

35. The Bylaws, Rules and Regulations of the Medical Staff of The Milford Hospital provide with respect to the procedure for an appeal to the governing body that the affected practitioner shall have:

> "The affected practitioner shall have access to the report and record (and transcription, if any) of the Ad Hoc Hearing Committee and all other material, favorable or unfavorable, that was considered in making the adverse recommendation or decision against him. He shall have ten days to submit a written statement in his own behalf, in which those factual and procedural matters with which he disagrees, and his reasons for such disagreement shall be specified. This written statement may cover any matters raised at any step in the procedure to which the appeal is related, and legal counsel may assist in its preparation. Such written statement shall be submitted to the Governing Body through the Chief Executive Officer by certified mail, return receipt requested, at least

> seven days prior to the scheduled date for the appellate review. A similar statement may be submitted by the Executive Committee of the Medical Staff or by the chairman of the Hearing Committee appointed by the Governing Body, and if submitted, the Chief Executive Officer shall provide a copy thereof to the practitioner at least seven days prior to the date of such appellate review by certified mail, return receipt requested."

36. Such other provisions relating to the procedure to be followed in an appeal to the Governing Body by an adverse determination of an application for staff privileges by an affected practitioner are facts as to which there is no genuine issue. Such facts appear in Article VIII, Sections 6 and 7 at pages 19-21 in the Bylaws, Rules and Regulations of the Medical Staff submitted herewith and as on file as a pre-filed exhibit in this action.

37. The Plaintiff made an application to obtain staff privileges at The Milford Hospital, Inc. on June 7, 1973.

38. Plaintiff's application was transmitted by the Administrator to the Secretary of the Medical Staff.

39. The Secretary of the Medical Staff recorded the receipt of the Plaintiff's application and transmitted it to the Credentials Committee of the Medical Staff for a report thereon in accordance with the Bylaws, Rules and Regulations.

40. No action with respect to the Plaintiff's application was taken at the meeting of the Credentials Committee of June 22, 1973.

41. On July 30, 1973, Dr. Earl E. VanDerwerker, Jr., coordinator of professional services of The Milford Hospital, Inc. called one of the Plaintiff's references, Dr. Mark Coventry, Chief of Orthopedics at the Mayo Clinic, Rochester, Minnesota, in reference to the application of the Plaintiff.

42. Dr. Coventry's appraisal in the telephone conversation

with Dr. VanDerverker was a mixed appraisal. Dr. Coventry appraised the work that Dr. Schlein had done in his written examination but at the same time stated "...there were times [Dr. Schlein] was difficult to work with, at times, did not work well with patients...".

43. Dr. Coventry did conclude by stating that he "saw no reason why [Dr. Schlein] could not be associated with your hospital."

44. At the August 23, 1973 meeting of the Credentials Committee, Dr. Robert Kerin, Chairman of the Committee reported that he had contacted Dr. Anthony Camarda, Chief of Orthopedics at the Park City Hospital, Bridgeport, where Dr. Schlein held staff privileges. Dr. Kerin reported that Dr. Camarda was disinclined to respond to any questions concerning the behavior of Dr. Schlein.

45. On September 7, 1973, Dr. Kerin, Chairman of the Defendant's Credentials Committee received a favorable letter of recommendation from Dr. Robert D. Ray, Head of the Department of Orthopedic Surgery at the University of Illinois College of Medicine.

46. On September 11, 1973, Dr. Robert Kerin transcribed for the record a report of his telephone conversation with Dr. Mark Coventry, Chief of Orthopedics at the Mayo Clinic. Dr. Coventry was reported by Kerin as describing Dr. Schlein as "not having both feet on the ground" and as "erratic". Schlein was not made Chief Resident at the Mayo Program because in Dr. Coventry's opinion, transmitted to Dr. Kerin, he could not be "trusted to be the Chief Resident".

47. Dr. Coventry's conversation with Dr. Kerin together with Dr. VanDerwerker's conversation with Dr. Kerin was construed

by the Credentials Committee as a negative recommendation.

48. On September 13, 1973, the Credentials Committee recommended that Dr. Schlein be granted provisional privileges at the Milford Hospital.

49. The Executive Committee of the Medical Staff accepted and adopted on September 25, 1973, the September 13, 1973 recommendation of the Credentials Committee to grant provisional privileges to Dr. Schlein.

50. In a September 24, 1973 letter to the Chairman of the Credentials Committee, Dr. Robert Kerin, Dr. Anthony L. Camarda, Chief of Orthopedic Surgery at Park City Hospital wrote negatively of Dr. Schlein as follows:

> "It is felt that he is forceful and energetic towards obtaining his goals, sometimes to the detriment of his colleagues, be they doctors or nurses. Of his qualities as an orthopaedic surgeon no one will belittle, but he himself seems to have the highest opinion of his own worth. A truly spicy charactér that needs tempering at times, seems to emerge, despite all efforts to control his lateral drift.
>
> I am sure that time and experience will eventually enable him to understand what constitute the important qualifications of a good physician."

51. At the October 3, 1973 meeting of the Credentials Committee, the recommendation to grant provisional privileges to Dr. Schlein was reconsidered and the Credentials Committee voted to recommend to the Medical Staff that Dr. Schlein be denied privileges at Milford Hospital.

52. The adverse recommendation of the Credentials Committee was not adopted by the Executive Committee of the Medical Staff on October 4, 1973.

53: At the October 5, 1973 meeting of the Medical Staff of the Hospital, the recommendation of the Credentials Committee not to grant privileges to Dr. Schlein was adopted by a vote of 15 against the grant of privileges, 9 for the grant of privileges and 9 abstentions.

54. On October 5, 1973, George R. Plaskowitz, Administrator of the Defendant Hospital, wrote to Dr. Mark Coventry seeking a written evaluation of the applicant, particularly in light of Dr. Coventry's two previous telephone conversations with Dr. VanDerwerker and Dr. Kerin, and in light of the inconsistencies and conflicts in the votes and recommendations of the Medical Staff.

55. On October 10, 1973, Dr. Mark Coventry responded to Mr. Plaskowitz's written request. Dr. Coventry's letter summarizes Dr. Schlein's term as a resident at the Mayo Clinic from July 1966 to July 1970. While praising Dr. Schlein's examination writing and considering his performance perfectly adequate, the letter also states that Dr. Schlein "at other times...seemed to be in less than normal contact with the problems that faced him day to day in a practical way." The letter concluded by noting that Dr. Schlein was not considered "ready for appointment as Chief Resident and expressed the hope that he would mature a bit more after leaving our residency". The letter concluded by recommending Dr. Schlein for appointment to the staff.

56. Dr. Robert Kerin and Dr. Nicholas Coassin, both members of the Credentials Committee, indicated at their deposition that they did not consider Dr. Coventry's letter to be a favorable recommendation.

57. On October 10, 1973, C. J. Lipkoff, M.D., Chief of Staff of the Milford Hospital Medical Staff, after talking by phone with Drs. Dworken and Glass, wrote to Dr. MacEllis K. Glass and Dr. Donald S. Dworken, who were active practicing orthopedic practi-

tioners in the Bridgeport community and sought an estimate of the applicant's competence, clinical judgment, and a statement concerning his relations with his peers. He further requested a statement concerning ethical and moral character.

58. No response was ever obtained from the above correspondents.

59. The Credentials Committee considered the disinclination of two practicing orthopedists in the Bridgeport community to comment either orally or to write with reference to the qualifications of the applicant to be a negative factor with respect to his qualifications.

60. The record of a telephone conversation by Dr. Leonard M. Rapoport with Dr. Nathan Friedman of Stratford indicates that Dr. Friedman found Dr. Schlein to be a straight-forward and "nice" fellow who appeared to be entirely competent to do his job.

61. On October 23, 1973, Dr. C. J. Lipkoff, Chief of Staff, presented an oral report to the Executive and Professional Committee of the Board of Directors concerning the status of the Plaintiff's application. Dr. Lipkoff orally reviewed the proceedings to that date and orally stated that the Medical Staff had recommended that Dr. Schlein's request for privileges be denied. Because the record presented was an oral one, the reasons stated could not be clearly delineated so as to be examined and reviewed and the Executive Committee then unanimously voted to recommend that the application of Dr. Schlein be re-submitted to the Staff for further consideration.

62. On November 14, 1973, Dr. Robert Kerin, Chairman of the Credentials Committee received a letter from Mortimer W. Zimmerman, Executive Director of the Weiss Hospital, Chicago, Illinois. The

letter indicated that Dr. Schlein was a member in good standing of the Hospital's staff from July 1, 1970 to March of 1972 and that his ethical and professional relationships were "considered satisfactory".

63. On November 23, 1973, as appears in the record, the Credentials Committee held its regular meeting. Dr. Allen Schlein was invited to attend in accordance with his request.

64. Dr. Schlein was informed orally at an extensive meeting of the status of the evidence both in his favor and detracting from his record.

65. At the November 23, 1973 meeting, Dr. Schlein explained the background of his difficulties with Dr. Anthony Camarda. The conclusion of the Committee was that the explanation by the applicant of the Camarda letter raised a question as to it possibly being the product of a personal bias.

66. The Credentials Committee, in light of the discussion with Dr. Schlein decided to resolve the issue by directing the Chairman to do the following:

> "1. Write to the Chief of Orthopedic Surgery at the Bridgeport and St. Vincent's Hospitals and request a positive letter of recommendation from each so that the fears and doubts generated by Dr. Camarda could be laid at rest.
>
> 2. Write to the Strauss Clinic where Schlein indicated he was employed to secure their appraisal of this applicant."

67. The response to the Chairman's request from Walter T. Shanley, M.D., Chief of the Department of Orthopedics at St. Vincent's Hospital, was a distinctly negative letter which stated: "I would under no circumstances extend this man privileges to Milford Hospital. I say this after considering this man's professionaland ethical performance in the Bridgeport community." This

letter was subsequently withdrawn by the named physician.

68. Edward P. McCreery, M.D., Chief of the Orthopedic Surg at Bridgeport Hospital replied merely that he had no information in which to evaluate Dr. Schlein's performance and reputation. Dr. Schlein had only courtesy privileges at Bridgeport Hospital.

69. Dr. Irwin M. Segal, responding to Dr. Kerin for the Strauss Surgical Group Associates on December 3, 1973, indicated that despite the Plaintiff's interest and excellence in orthopedic biomechanics, Dr. Segal was "disturbed by his behavior which was sometimes explosive...". Dr. Segal further stated that he was "not overly impressed with his surgical skills, nor with his clinical judgment in difficult cases."

70. Dr. Irwin Segal's deposition was taken by Plaintiff's counsel in Chicago on July 8, 1975. At his deposition, Dr. Segal re-affirmed his negative impression of Dr. Schlein's behavior. Dr. Segal stated that he was disturbed at Dr. Schlein's frustratio tolerance which was sometimes very short and "that he did not conduct himself with the equinimity which I felt should be present during the situations that he expressed these episodes of 'explosive behavior'". (See deposition of Dr. Irwin M. Segal, July 8, 1975 at page 19).

71. On December 6, 1973, the Credentials Committee of the Medical Staff, as appears in the minutes of said Committee on file, voted to recommend to the Medical Staff, with Dr. Robert Kerin abstaining, not to recommend the applicant for privileges at the Milford Hospital.

72. The stated grounds were, in addition to the negative letter from Dr. Irwin Segal, the negative comments related orally to Dr. Robert Kerin in a telephone conversation with Dr. Segal at

the Strauss Clinic in Chicago and recorded by Dr. Korin. Furthermore, the Committee relied on the inability of Dr. C. J. Lipkoff as Chief of Staff to obtain a favorable letter from any orthopedist practicing in the City of Bridgeport.

73. The recommendation of the Credentials Committee was accepted at the meeting of the Medical Staff on December 7, 1973. The negative recommendation of the Medical Staff was communicated to the applicant by the administrator on December 7, 1973.

74. The administrator also enclosed with his notice of denial a copy of the Bylaws, Rules and Regulations of the Medical Staff.

75. Pursuant to Article VIII of the Bylaws, Rules and Regulations of the Medical Staff of the Milford Hospital, counsel for the applicant made demand on December 18, 1973 for a statement of the reasons considered by the Medical Staff in reaching the adverse decision.

76. On December 28, 1973, George R. Plaskowitz, Administrator, responded to Dr. Schlein's counsel's request. The December 28, 1973 letter, as more particularly appears in the record on file summarized the reasons for the recommendation of the denial of the Plaintiff's application. The letter further informed him pursuant to Article VIII, Section 5(a)(1) that the Plaintiff's application for an intra-professional hearing before the Ad Hoc Hearing Committee would be conducted on January 3, 1974 at 6 P.M. As the hearing was to resolve on an "intra-professional basis" matters bearing on the professional competency and conduct of the applicant, it was the judgment of the Hearing Committee that this could be accomplished best by neither side being represented by an attorney at law.

77. The applicant appeared at the Ad Hoc Hearing Committee assisted by his partner, Dr. Allen Lewis, who was present throughout the proceedings to assist him.

79. At the Ad Hoc Hearing Committee meeting, the applicant presented favorable letters from Peter E. Hope-ross, M.D., Chief of the Medical Staff, Park City Hospital of December 19, 1973, Walter S. Wiggins, M.D., December 19, 1973, Walter A. Hoffman, M.D., December 22, 1973, and Pauline M. Spelke, Administrator, Park City Hospital.

80. The Ad Hoc Hearing Committee rendered a decision on January 21, 1974. Its decision was as follows:

> "The Ad Hoc Committee has considered the previously and newly submitted letters, some favorable and some unfavorable, to Dr. Allen Philip Schlein. Dr. Schlein impressed us with his work in Total Joint Arthroplasty, but we do not feel this expertise is appropriate to the present needs of Milford Hospital. By unanimous vote, the Ad Hoc Committee does not find sufficient reason to recommend a change in the previous staff decision denying Dr. Allen Philip Schlein an appointment to the Milford Hospital Staff."

The recommendation of the Ad Hoc Hearing Committee was unanimously accepted by the Medical Staff at its meeting of January 22, 1974.

81. On January 23, 1974, George R. Plaskowitz, Administrator, informed Dr. Schlein of the decision of the Ad Hoc Committee and its affirmance by the Medical Staff.

82. On February 1, 1974, counsel for Dr. Schlein requested an appellate review pursuant to Article VIII, Section 6(g) of the Bylaws, Rules and Regulations of the Medical Staff with respect to Dr. Schlein's application.

83. Counsel for Dr. Schlein requested, as provided for in the Bylaws, the right to conduct an oral argument. This right was granted. Counsel for Dr. Schlein also submitted prior to the hearing a "written statement of applicant setting forth in detail

affirmative case in support of applicant's contentions".

84. On February 20, 1974, counsel for the Hospital delivered to Dr. Schlein's counsel copies of all documents comprising the record to date in the matter including copies of all minutes of the Credentials Committee, the minutes of the Medical Staff, minutes of the Executive Committee and the Board of Directors, all correspondence and memos and all transcriptions of notes and telephone conversations. Prior to the decision of the Ad Hoc Hearing Committee of January 21, 1974, the applicant had received a copy of the transcript.

85. Applicant's counsel's request for permission to introduce additional material into the record at the appellate review hearing was granted, conditioned on that material being reviewed by the Committee and adjudged according to its appropriate weight in relevance. Pursuant to the grant of that request, counsel for the applicant submitted additional letters at the appellate review hearing from the following persons:

(a) Fred F. Nathan, M.D., 2/7/74

(b) Mark B. Coventry, M.D., 2/21/74; received 2/25/74

86. At the hearing, counsel for the applicant introduced the letter dated February 8, 1975 from Walter A. Shanley, Chief of Orthopedics at St. Vincent's Hospital, Bridgeport, addressed to Dr. Robert Kerin. It was explained that this letter was received at the Hospital on February 15 by Dr. Kerin.

87. Counsel stated as a prelude to the introduction of the letter that he had talked to Dr. Shanley by telephone during the week of February 20th, and confirmed that Dr. Shanley had sent a letter retracting his November 29, 1973 letter. Dr. Shanley's letter of retraction of February 8, 1974 was duly introduced into

the record.

88. Based on the fact that the state of the evidence which formed the basis of the Medical Staff's prior recommendation to deny privileges to Dr. Schlein had been changed significantly as a result of the withdrawal by Dr. Shanley of his negative letter, the Appellate Review Committee adopted the following resolution at the February 27, 1974 meeting:

> "That the adverse recommendation of the Medical Staff with respect to the application of Dr. Allen P. Schlein for privileges at the Milford Hospital be referred back to the Medical Staff for further reconsideration, review and further recommendation, said recommendation to be made to the Appellate Review Committee within 21 days of the date of the receipt of this report of referral."

89. The resolution of the Appellate Review Committee of March 20, 1974 was communicated in letter form by the Administrator to Dr. Schlein and Dr. C. J. Lipkoff, Chief of Staff.

90. In its discretion, the Medical Staff resolved to recommit the matter to the Ad Hoc Committee which had previously met on January 3, 1974, to reconsider the recommendation of the Credentials Committee and the Medical Staff in light of the change in the status of the evidence. The report of the Ad Hoc Committee contains the following findings:

> "The principal point of issue, new information, seemed to resolve around a letter by Dr. Shanley retracting his original letter about Dr. Schlein. Dr. Schlein admitted that pressure was brought to bear on Dr. Shanley through Dr. Parker, Chairman of the Board of Censors, Fairfield County Medical Society. His attorney, John Coughlin, stated he "asked him [Dr. Shanley] to retract it" and if not, we would have pursued a litigation.
>
> The balance of new information is such that the Committee does not change its opinion about not recommending Dr. Allen Philip Schlein for appointment to the Milford Hospital Medical Staff."

91. The Medical Staff of the Milford Hospital accepted the recommendation of the Ad Hoc Committee to deny privileges to the

applicant on April 15, 1974.

92. On April 25, 1974, George R. Plaskowitz, Administrator, informed the applicant that the Appellate Review Committee received the adverse recommendation of the Medical Staff on April 15, 1974. After a review of the entire record of the proceedings and after further discussion, Mr. Plaskowitz informed the applicant that the Appellate Review Committee voted unanimously to affirm the negative recommendation of the Medical Staff and to deny the application for privileges.

93. The action of the Appellate Review Committee constituted, for the purpose of the Medical Staff Bylaws, hearing procedure the final action of the Board of Directors.

THE DEFENDANT
THE MILFORD HOSPITAL, INC.

By
Gitlitz, Ronai & Berchem, P.C.
by Stephen E. Ronai, Esquire

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

. . . .

ALLEN P. SCHLEIN, M.D. .

Plaintiff .

VS. . CIVIL NO. N-74-169

THE MILFORD HOSPITAL, INC., .
a Connecticut corporation .

Defendant .

. . . .

AFFIDAVIT OF GEORGE R. PLASKOWITZ, ADMINISTRATOR OF THE MILFORD HOSPITAL, INC., IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56(C) FED.R.CIV.P.

I, GEORGE R. PLASKOWITZ, being duly cautioned and sworn, herewith depose and state:

1. I am the administrator of The Milford Hospital, Inc., and have been acting in such capacity since 1966.

2. As administrator of the hospital, I received the application of Dr. Schlein for privileges on the medical staff of The Milford Hospital on June 7, 1973, and I am personally familiar with the facts of this transaction, from the date of the application to the date of this affidavit. Based on my personal knowledge of the facts in this case, and of my long-term association with the hospital as administrator, I am submitting this affidavit to support our counsel's motion to dismiss the complaint on the ground that The Milford Hospital, Inc. is a private, self-governing, nonprofit organization and therefore, in denying Dr. Schlein's application, did not act under color of state law.

3. With respect to the issue of subject matter jurisdiction,

I herewith re-affirm and re-state all of the statements made in a previous affidavit executed the 4th day of August, 1974, containing 20 separate paragraphs and containing 10 pages.

4. This affidavit is made in support of the motion for summary judgment pursuant to Rule 56(c) in order to delineate the material facts relied upon by the Credentials Committee, the Medical Staff, the Ad Hoc Hearing Committee and the Appellate Review Committee with respect to the rejection of plaintiff's application for staff privileges. Without passing judgment on the merits of the decision, my familiarity with the proceedings as it advanced from stage to stage leads me to the conclusion that the following are the reasons which weighed heavily and laid the foundation for the collective judgment of the Medical Staff which was affirmed by the Board of Directors.

5. In short, the main facts which appear to buttress and which constitute the foundation for reliance by the Committees of the Hospital are the following:

a) The fact that during his residency at the Mayo Clinic, Rochester, Minnesota, he was reported as being "difficult to work with and at times did not work well with patients". Despite the fact that subsequently Dr. Mark Coventry did write a letter to John Coughlin, Esquire, attorney for the applicant, in which he essentially recommended him for membership on the staff, this letter came after the controversy concerning Dr. Schlein's application had been known to Dr. Coventry and was considered by the Staff to be a less objective response than the initial letter of Dr. Coventry;

b) Furthermore, unrebutted in the record are the remarks from Dr. Coventry to Dr. Kerin indicating that Dr. Schlein was "erratic", together with the record of the telephone conversation of Dr. Coventry with Dr. VanDerwerker, all of which resulted in a negative impression concerning the applicant.

c) The September 24, 1973 letter to the Chairman of the Credentials Committee, Dr. Robert Kerin from Dr. Anthony L. Camarda, was apparently sufficiently explained in a subsequent face to face meeting between Dr. Schlein and the Credentials Committee held on November 23, 1973. However, despite assurances and some resolution of the matter on the ground that Camarda's letter may have been the result of a personal bias, the description of Dr. Schlein by Dr. Camarda, ("needs tempering; need to control his lateral drift"), all seem to complement evaluations of his erratic and difficult behavior by other declarants that keep cropping up throughout the record.

d) Furthermore, the fact that Dr. C. J. Lipkoff, Chief of Staff, reported that he could get no response from Dr. Dworkin and Dr. Class, Bridgeport orthopedists, concerning an evaluation of Dr. Schlein, was considered by the Credentials Committee and the Staff to be a negative recommendation.

e) The letter of October 10, 1973 from Dr. Mark Coventry, assessing Dr. Schlein's term as a resident at the Mayo Clinic from July 1966 to July 1970 was considered by the Medical Staff to be a negative letter. Although the letter did recommend him for appointment, it stated that "Dr. Schlein at other times...seemed to be in less than normal contact with the problems that faced him day to day in a practical way".

f) The fact that Dr. Schlein was not considered by Dr. Coventry to be ready for Chief Residency until he could "mature a bit" was considered to be a negative recommendation.

g) The negative letter of Walter Shanley of November 29, 1973, subsequently withdrawn by Dr. Shanley on February 8, 1974, was, because of the circumstances, not considered a major factor in the decision by the Staff.

h) The negative evaluation of Dr. Schlein by Dr. Irwin Segal, both in Dr. Segal's letter of December 6, 1973 and in the deposition of July 8, 1975, was considered by the Credentials Committee and the Medical Staff and the Appellate Review Committee as being a negative evaluation.

6. In short, the record of Dr. Schlein's performance with respect to his ability to work well with others characterized by initial negative recommendations - which were "shored up" or uncorrected by subsequent letters by other physicians - left an unfavorable impression on the Staff and all parties associated with the Hospital. Essentially, the favorable letters all came from the Park City Hospital and included the letter of the Administrator. They apparently were elicited from persons who did not work with him directly in orthopedics.

7. The Medical Staff, Credentials Committee and the Appellate Review Committee had ample evidence based on the facts set forth above to conclude that there was a serious question concerning his stability and his ability to cooperate with others.

8. The Milford Hospital, Inc. is licensed for 150 beds and has an active medical staff of approximately 60 physicians. In a small hospital, the factor of ability to work well with others is directly related to the hospital's object of assuring patient welfare and quality care. As stated in a recent case shown to me by our counsel, the following is particularly true with the Milford Hospital:

> "...[T]hat the factor of ability to work smoothly with others is reasonably related to the hospital's object of insuring patient welfare. This conclusion seems justified for in the modern hospital, staff members are frequently required to work together or in teams, and a member who, because of personality or otherwise, is incapable of getting along, could severely hinder the effective treatment of patients... [T]he absence of a compatible team working together could impair the doctor's performance and consequently undermine the effectiveness of the treatment given the patient."

9. The background facts on the plaintiff-applicant raised serious questions concerning his apparent inability to conform his conduct to the philosophy, if not the letter, of this quotation. The Staff was concerned of his repeated inability to blend well with other physicians and this concern is amply buttressed by the facts in the record which were adopted by the Board of Directors.

George R. Plaskowitz

Subscribed and sworn to before me this 14th day of April, 1976.

Laura A. Rosenberg
NOTARY PUBLIC

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D., *
Plaintiff *
VS. *
THE MILFORD HOSPITAL, INC., *
Defendant *

CIVIL NO. N-74-169

JUNE 1, 1976

AFFIDAVIT

I, WILLIAM K. BENNETT, being duly sworn depose and state that:

1. I am a member of the law firm of Bennett, Kapusta and Coughlin, Counsel for the plaintiff, Dr. Allen Schlein.

2. I took the depositions of Daniel Johnson, Chairman of the Executive Committee of the Board of Directors, the body charged with the duty of final decisions on applications for privileges at Defendant Hospital, and of Fred Warren, President of Defendant Hospital. Copies of which are on file with the Court.

3. Johnson stated that he didn't know and neither did the Executive Committee why Dr. Schlein's application was rejected. (Johnson T.40) He further stated the decision was not made by his board but was a "rubber stamp" decision without any facts. (Johnson T-32-47)

4. Warren stated that the letter of Dr. Carmada was not relied upon by the Board (Warren T-58,59). He further states he knows of no facts upon which the denial was based. (Warren T-26-35)

5. It is apparent from a reading of the testimony under oath there was no basis in fact for the denial of Dr. Schlein's application or that he was denied due process.

WILLIAM K. BENNETT

Subscribed and sworn to before me this 2nd day of June, 1976.

Notary Public

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M. D. *
*
VS. * CIVIL NO. N 74-169
*
THE MILFORD HOSPITAL, INC. * A F F I D A V I T

The undersigned, being duly sworn, deposes and says:

1. I am the Plaintiff in the above entitled matter.

2. I maintain an office for the practice of orthopaedic surgery at 75 New Haven Avenue, Milford, Connecticut, and have since June, 1973.

3. As an orthopaedic surgeon, it is vital and necessary to have access to hospital facilities to completely and fully render proper medical assistance and attention to my patients.

4. The denial of hospital staff privileges by the defendant hospital has severely limited the scope of my right to practice my profession of orthopaedic surgery, as I do not have access to defendant hospital nor can I use its facilities in the care of my Milford patients.

5. I reaffirm all of my statements in my Affidavit dated July 22, 1974 and incorporate the same herein.

6. The denial of my application for hospital staff privileges by the defendant has had a direct impact upon my ability to practice my profession of orthopaedic surgery under my license granted by the State of Connecticut; has caused injury to my

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& COUGHLIN
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03287

reputation in the medical community; has had a direct impact upon my ability to advance in my profession on a national level.

7. Since the denial of my application for hospital staff privileges at the defendant hospital, I have been requested by the American Academy of Orthopaedic Surgery to appear for two interviews in regard to my application for a fellowship in the Academy, once in 1975 and again in 1976. At both interviews the primary subject of their questioning related to the reasons for the denial of hospital staff privileges and my inability to obtain hospital staff privileges at Milford Hospital. I am a member of the American Academy of Orthopaedic Surgery; however, I have not been appointed a fellow, which I believe is directly related to the denial of my hospital staff privileges at Milford Hospital.

8. Having participated in the ad hoc review of my application and the appellate review by the Executive Board, it is clear to me that the denial was based not upon any factual basis but upon immaterial and irrelevant considerations.

9. I requested to be represented at the ad hoc committee hearing by an attorney of my choosing; however, my request was denied and notwithstanding the same, I requested my attorney to appear in the hope that the ad hoc committee would reverse its position. However, my attorney was requested to leave the meeting and I was unrepresented at the ad hoc hearing. My associate, William Lewis, attended as his name had repeatedly appeared throughout the proceedings and the purpose of his appearing was to protect his good name and reputation and not for purposes of representing me.

10. At the time of the ad hoc committee hearing there were no witnesses presented and I was unable to cross-examine the letters which were submitted by the medical staff representative, Dr. Robert Kerin. I was placed in the position of defending my good reputation, professional ability and competence, and ability to work with others, on subjective opinions contained in the letters which had been assumed to be true by all concerned. I was condemned before the hearing started and was requested to explain each of the subjective opinions which I did not believe were valid observations and were not correct.

11. I was represented by counsel at the appellate review hearing before the Executive Board of the Board of Directors; however, the hearing, pursuant to the by-laws, was limited to the hospital records and the proceeding before the ad hoc committee. The by-laws did not provide for calling of witnesses at this stage of the proceedings but merely a hearing on the record thus far established. Counsel at this time could not adequately protect my rights except to raise objections as to earlier proceedings, such as the denial of proper notice of the charges; the denial of the right of confrontation and cross-examination of witnesses; and further, the denial of the procedural due process; and finally, the lack of any substantial evidence.

12. At the time of the ad hoc committee hearing, I was confronted for the first time with most of the information contained in the letters and expected to defend myself against the written statements assumed to be true, immediately and "on the spot" without an opportunity to prepare. I previously requested in writing all information regarding the reason for my denial

but received only the written reasons contained in the letter of George Plaskowitz, dated December 28, 1973.

13. I have read the affidavit of George Plaskowitz, hospital administrator, submitted in support of the defendants' Motion for Summary Judgment dated April 14, 1976, and cannot understand what criteria the hospital applied in regard to my application. In one respect, in Paragraph 5(a) he states that a subsequent letter from Dr. Coventry was considered to be less objective than a previous letter. Then he states that I did not refute an alleged telephone conversation concerning me. However, the record will reflect that the telephone conversation was objected to at the ad hoc committee hearing and I seriously questioned the statements. I was, however, also requested by the ad hoc committee to explain someone else's statement of which I had no knowledge.

14. Also, in the affidavit of George Plaskowitz, he makes reference to Dr. Camarda's letter. However, it was my understanding that the letter has been sufficiently explained to the Credentials Committee and it was not to play a role in my application. This meeting occurred on November 23, 1973. At the ad hoc committee hearing Dr. Camarda's letter was disputed.

15. George Plaskowitz, in his affidavit, states that the failure to obtain a response from Drs. Dworken and Glass was considered to be negative. There was no information before the Credentials Committee, medical staff, ad hoc committee or appellate review committee from Drs. Dworken or Glass; and to assign a negative recommendation from a non-statement or from no information is arbitrary and capricious.

16. At all times while during my residency at Mayo Clinic, while practicing at Weiss Memorial Hospital, at the Strauss Surgical Group where I was an employee, and at Park City Hospital, I demonstrated the ability to work smoothly with others insuring the highest degree of patient care and welfare. Dr. Siegal testified in his deposition that I worked well with him.

17. My testimony before the Credentials Committee, the ad hoc committee, and the appellate review committee substantiated my ability to work well with others, my good reputation, my professional competency and clinical judgment, which was further buttressed by letters I submitted, all of which were obviously disregarded in favor of the ex-parte statements submitted by the medical staff.

18. The denial of hospital staff privileges at Milford Hospital has created a blemish on my record; has affected my ability to practice my profession; has hampered me in my professional practice; has caused me financial losses; and has affected my reputation and standing in my professional community.

19. This affidavit is made up from my own personal knowledge and for the purpose of opposing the defendant's Motion for Summary Judgment, pursuant to Rule 56(c), F.R.C.P.P.

ALLEN P. SCHLEIN

STATE OF CONNECTICUT)
)   ss. Milford, June 2, 1976
COUNTY OF NEW HAVEN)

Sworn to and subscribed before me this 2nd day of June, 1976.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN P. SCHLEIN, M.D., *
Plaintiff *
vs. * CIVIL NO. N-74-169
* May 28, 1976
THE MILFORD HOSPITAL, INC., *
Defendant *

AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I, JOHN J. COUGHLIN, being duly sworn, depose and say:

A. I am a member of the law firm of BENNETT, KAPUSTA & COUGHLIN, 75 Broad Street, Milford, Connecticut 06460.

B. This Affidavit is made of my own personal knowledge from an examination of the records on file, the proceedings before the Defendant Hospital and from depositions taken by the Plaintiff through counsel on behalf of the Plaintiff.

C. The Affidavits herein and the status of the evidence indicate that there is a genuine issue as to material facts and the Defendant is not entitled to Summary Judgment as a matter of law under Rule 56C, Federal Rules of Civil Procedure.

D. The Plaintiff requested that I represent him at the Ad Hoc Review Committee for purposes of examination of witnesses to insure that the rules and by-laws were adhered to, to insure that only proper, substantiated evidence was introduced and to delineate the issues so as to afford maximum protection of Plaintiff's rights; however, he was denied the right to be represented at the cricical stage of proceedings, which provide for the taking of evidence, examination of witnesses, cross-examination and confrontation. As a result of the denial, the Plaintiff's application was denied upon the basis of ex-parte letters that did not have a factual basis.

E. Counsel was given the right to appear at the Appellate Review Committee; however, the record had been established and the By-Laws, Rules and Regulations of Milford Hospital do not provide for the calling of witnesses and permission had to be obtained just for the purpose of introducing clarification of previous ex-parte material. Counsel's appearance at this stage could not adequately protect Plaintiff's rights.

F. The following facts and testimony are being filed in opposition to Defendant's Motion for Summary Judgment:

1. The Plaintiff, Allen P. Schlein, M.D. made application to the Milford Hospital, Inc. for staff privileges on June 3, 1973.

2. His application for hospital staff privileges at the Milford Hospital, Inc. was first considered by the Credentials Committee on June 22, 1973. The minutes of the hospital state that two aggrieved members of the medical community were asked to testify before the Credentials Committee, state and elaborate their objections to Dr. Lewis, whose application was considered at the same time as Dr. Schlein's.

3. The two aggrieved members of the medical community asked to testify were Michael Gavin, a physical therapist who knew Dr. Schlein and Dr. Lewis. The second person asked to testify was Dr. Peter Naiman

4. The minutes of the Credentials Committee on June 22, 1973 contain the following statement, "The application of Dr. Schlein was considered and the Committee felt that since the personality of Dr. Lewis required further investigation and definition and Dr. Schlein is associated with him, it would accord Dr. Schlein the same scrutiny." (See Minutes of Credential Committee, June 22, 1973)

5. Michael Gavin is a physical therapist with an office at 2044 Bridgeport Avenue, Milford and is Chief Physical Therapist at the Milford Hospital, Inc.

6. Dr. Kerin, Chairman of the Credentials Committee approached Michael Gavin and asked for information concerning Dr. Lewis and requested him to appear and testify at the Credentials Committee hearing on June 22, 1973. (See Deposition, Michael Gavin, February 15, 1975) Dr. Kerin requested Mr. Gavin to testify as to certain alleged difficulties that Mr. Gavin was having or had with Dr. Lewis, but, did not inform Mr. Gavin that Dr. Schlein's application was also being considered.

7. At the time of appearing before the Credentials Committee on June 22, 1973, the Credentials Committee or its Chairman, did not ask for any information concerning Mr. Gavin's relationship with Dr. Schlein. Mr. Gavin practiced physical therapy at Park City Hospital and was familiar with Dr. Schlein and had treated his patients and he got along well with Dr. Schlein at Park City Hospital. (Deposition Michael Gavin, February 15, 1975, page 26)

8. The Credentials Committee did not request information or knowledge concerning Dr. Schlein at any time after June 22, 1973. (Deposition, Michael Gavin, February 15, 1975, page 31)

9. The Credentials Committee's minutes of June 22, 1973, the date that Mr. Gavin requested the Committee to investigate Dr. Lewis's activities in the sports medicine area and raised the question as to whether Dr. Lewis's conduct was ethical. The minutes further reflect he suggested that the Chief of Orthopedics of the three Bridgeport hospitals be questioned. The foregoing statement contained in the minutes of the Credential Commitee of June 22, 1973, expressly deny that he made such statements. (See Deposition, Michael Gavin, February 15, 1975, pages 43, 44 and 45)

10. Mr. Gavin testified that he treated patients of Dr. Schlein's at Park City Hospital, got along well with Dr. Schlein; that he heard no complaints from the staff of Part City Hospital concerning Dr. Schlein; that Dr. Schlein expressed a concern for his patients and that he, Michael Gavin, as a physical therepist, had a good rapport with Dr. Schlein and that he considered Dr. Schlein a good orthopedic doctor, who was concerned about the welfare of his patients. (Deposition, Michael Gavin, February 15, 1975, page 56)

11. No one from the Milford Hospital, Inc. requested the information set forth in paragraph 9 from Michael Gavin.

12. Michael Gavin, when discussing Dr. Lewis, made it very clear to Dr. Kerin, prior to the meeting of June 22, 1973, that he was only discussing Dr. Lewis and not Dr. Schlein. (Deposition Michael Gavin, February 15, 1975, page 57)

13. Subsequent to the meeting of the Credentials Committee of June 22, 1973, where it was decided that since the personality of Dr. Lewis required further investigation and definition and Dr. Schlein was associated with him, it would accord Dr. Schlein the same scrutiny. Dr. VanDerwerker, on July 30, 1973, contacted Dr. Mark Coventry, by telephone. Dr. Coventry is Chief of Orthopedics, Mayo Clinic, Rochester, Minnesota. Dr. VanDerwerker, on August 23, 1973, was asked to call Dr. Mark Coventry regarding both Dr. Lewis and Dr. Schlein, despite prior telephone conversation. Thereafter, on September 11, 1973, Dr. Kerin spoke to Dr. Coventry, Chief of Orthopedics, Mayo Clinic.

14. On September 13, 1973, the records of the Credentials Committee reflect that they voted that Dr. Schlein be granted provisional privileges in Orthopedic Surgery, with Dr. Kerin abstaining for the reason that his specialty was orthopedic surgery and, secondly, that testimony was heard by the Credentials Committee from his associate, Peter Naiman, M.D. (Minutes, Credentials Committee, September 13, 1973)

15. On September 25, 1973, Dr. Schlein's application took its next step according to the By-Laws of the Medical Staff of the Milford Hospital, Inc. and the recommendation of the Credentials Committee to approve the application of Dr. Schlein was accepted as submitted.

16. Dr. Peter Naiman, an associate in orthopedic surgery with Dr. Robert Kerin, who testified at the Credentials Committee hearing on June 22, 1973, was a member of the Ad Hoc Committee who heard the appeal of Dr. Schlein from the adverse recommendation from the Medical Staff to deny a recommendation for hospital staff privileges of Dr. Schlein.

17. At the time of the Plaintiff's application, Dr. Robert Kerin and Dr. Peter Naiman had a monopoly in orthopedic surgery in the City of Milford, with full hospital staff privileges, practicing at Milford Hospital. Dr. Peter Naiman testified in his deposition of February 24, 1975, as follows:

Q. Do you know at that time, referring to June of 1973, of any other orthopedic surgeons who had full privileges at Milford Hospital?

A. No.

Q. Now, prior to 1973, June, were there any other orthopedic surgeons who had offices in the City of Milford, do you know?

A. No.

Q. And at that time, June of 1973, how many orthopedic surgeons had full privileges at Milford Hospital?

A. Three, myself, Dr. Kerin and Dr. VanDerwerker, who was not -- Dr. VanDerwerker not being active at the time.

Q. Was Dr. VanDerwerker associated in professional practice with any other doctor?

A. No.

Q. Any other orthopedist?

A. No.

Q. Had he been associated before that time --.

A. He had previously been associated with Dr. Kerin.

Q. And taking the year 1973, were there any other orthopedic surgeons who had full privileges at Milford Hospital, other than yourself and Dr. Kerin and Dr. VanDerwerker?

A. I don't believe so.

(Deposition, Dr. Peter Naiman, February 24, 1975, pages 4, 5)

18. The association between Dr. Kerin and Dr. Naiman, i.e. Orthopedic Associates, practicing together, was deemed sufficient reason for Dr. Kerin to abstain from voting on the application of Dr. Schlein on September 13, 1973 and further, that testimony was heard by the Credentials Committee from Dr. Naiman.

19. Notwithstanding the known conflict of interest, Dr. Kerin was the medical staff representative appointed to fulfill the prosecutor's role at the Ad Hoc hearing and present the facts and evidence in support of the adverse recommendation of the medical staff.

20. Notwithstanding the known conflict of interest and Dr. Naiman appearing and testifying at the Credentials Committee hearing on June 22, 1973 and his partnership with Dr. Kerin in Orthopedic Surgery, he sat as a member of an Ad Hoc Committee with the duty to be impartial, fair, unbiased and review the facts and evidence produced at the Ad Hoc Committee hearing.

21. Dr. Naiman and/or Dr. Kerin, despite the possibility of conflict of interest involving the joint practice of Orthopedic Surgery and the appearance of Dr. Naiman to testify, as set forth in the Minutes of the Credential Committee of September 23, 1973, did not disqualify themselves from the Ad Hoc Committee hearing.

22. The Credentials Committee, notwithstanding their approving Dr. Schlein privileges on September 23, 1973, and subsequently, the Executive Committee approving the recommendation at a meeting on October 3, 1973, and the Credentials Committee reversed their recommendation. The By-Laws of the Milford Hospital, Inc. did not provide any procedure for the Credentials Committee to reconsider their recommendation after it has voted on an application

and forwarded the same to the next body of the medical staff for approval by the Executive Committee.

23. The Executive Committee called a special meeting on October 4, 1973 and voted that Dr. Allen Schlein be granted privileges in orthopedics at the Milford Hospital, Inc.

24. Thereafter, on October 5, 1973, the medical staff voted to deny a recommendation of granting of privileges for the Plaintiff.

25. By letter dated October 10, 1973, Dr. Mark B. Coventry wrote to George R. Plaskowitz, Administrator of the Milford Hospital, Inc., that Dr. Schlein was a resident at Mayo Clinic from July, 1966 to July, 1970, during which time, his performance was considered perfectly adequate. He indicated that there were slight inconsistencies, for at times, his examination writing was extremely brilliant. He ended by recommending Dr. Schlein to the medical staff of the Milford Hospital, Inc.

26. On October 19, 1973, there were rumors at the Milford Hospital that Dr. Allen P. Schlein had been denied privileges at Bridgeport and St. Vincent's hospitals and the Administrator of the Milford Hospital, Inc. investigated by contacting the Administrators of both hospitals, who made it clear that the rumor had no justification as Dr. Schlein was granted courtesy privileges in both hospitals.

27. On Tuesday, October 23, 1973, the Board of Directors, Executive and Professional Committees considered the recommendation of the medical staff and upon review and discussion of the material, it was voted to refer the matter back to the medical staff for further consideration as the material did not appear adequate to deny Dr. Schlein privileges.

28. On November 14, 1973, Mortimer W. Zimmerman, Executive Director of Weiss Memorial Hospital, Chicago, Illinois, wrote to Robert Kerin, M.D. that the records of the Weiss Memorial Hospital showed that during the entire time of Dr. Schlein's staff appointment in the Department of Orthopedics, between July 1, 1970 and March, 1972, he was a member in good standing at the hospital and carried out his responsibilities to both the medical staff and to the hospital. He concluded the letter by saying that Dr. Schlein had excellent training and his ethical and professional standards were considered satisfactory.

29. On November 23, 1973, the Credentials Committee of the Milford Hospital, met with Dr. Schlein, who was invited to attend. The minutes reflect Dr. Schlein again impressed the Committee with his desire to bring better care to those residents of Milford who sought his services. The Minutes reflect Dr. Schlein was able to provide rebuttal on statements that Dr. Camarda made.

30. "After discussing the matter the Credentials Committee felt that Camarda's letter could not be relied upon. Dr. Schlein's manner, his handling himself, his ability to answer questions and his inability to hide anything left every member with the impression that he would be an asset to the community." (Minutes of the Credentials Committee, November 23, 1973, page 2)

31. The Credentials Committee met again on December 6, 1973, voted again not to recommend the applicant for privileges at the Milford Hospital, Inc. and on December 7, 1973 the medical staff met and voted to accept the report of the Credentials Committee. The Minutes reflect the Board of Directors had been concerned that

sufficient documentation had been lacking heretofore and the letters of Dr. Shanley and Dr. McCreery gave documentation. Thereafter, a Motion was made that the medical staff recommend to the Board of Directors that Dr. Schlein be denied privileges at the Milford Hospital, Inc. On December 18, 1973, Dr. Schlein gave notice of appeal of the adverse recommendation in accordance with Article VIII of the By-Laws, Rules and Regulations of the Milford Hospital, Inc. medical staff. Dr. Schlein requested to be notified in writing, in concise language, of the reasons, subject matter and/or acts that were considered in making the adverse recommendation.

32. In Dr. Schlein's letter of December 18, 1973 to the Milford Hospital, Inc., he specifically requested the right to be represented at the hearing by an attorney, as denial of his privileges constituted a denial of his right to practice his profession and further, reflected on his professional conduct. A further reason was the right to practice his profession of Orthopedic Surgery and his good reputation was a serious matter, and could only by protected under the circumstances by an attorney. Dr. Schlein was notified in writing on December 28, 1973 by the Defendant, Hospital, that his right to be represented by counsel was denied.

33. The request to be represented by counsel by Dr. Schlein was renewed on January 3, 1974 at the time of the Ad Hoc Committee hearing and was denied even though counsel was present at the hearing, available to afford representation in this critical stage of the proceedings. The Ad Hoc Committee again denied the renewed request for representation by counsel and counsel left the hearing.

34. The Medical Staff held a special meeting on December 28, 1973, which had been adjourned from December 26, 1973. The Chairman of the Medical Staff, Dr. Lipkoff, reported that the hospital attorney, Stephen Ronai, had revised the statement of the Credentials Committee, summarizing its position on Dr. Schlein's application. Mr. Plaskowitz said that "Mr. Ronai had been asked to make the statement as strong as possible". The statements of the Credentials Committee was projected by a camera onto a screen followed by the attorney's revision, which was attached to the Minutes of December 28, 1973. It was voted unanimously that the revised statement be approved. The attorney's revision, which was intended to be as strong as possible, provided as follows:

1. "That the evaluations of your recent clinical experience received from Chiefs of Orthopaedic Surgery at the Park City Hospital and St. Vincent's Hospital were essentially negative with respect to your professional reputation and ability to work well with others.

2. That the evaluation of your professional conduct in current and past hospital associations has developed a substantial record that your behavior in the performance of your professional duties demonstrated a difficulty in working well with patients, as well as with other members of the various medical staffs on which you served.

3. That your inability to obtain an affirmative recommendation with respect to your professional competence from the Chiefs of Orthopaedic Surgery at two local hospitals, together with the pattern of abrasive behavior with respect to fellow staff members at other hsopitals, as well as other facts developed in the record, raised substantial doubts that you possessed the demonstrated competence, good reputation and ability to work well with others so as to ensure a high quality of care to patients at Milford Hospital.

4. And finally, such other facts which will appear in the record failed to demonstrate to the Medical Staff that the approval of your application for privileges would be in the best interests of the health needs of the Milford community."

35. Mr. Plaskowitz, in his deposition, was asked the following question:

Q. Was the purpose of wording the letter as strongly as possible to deter Dr. Schlein from pursuing his application any further before Milford Hospital?

A. I don't know. I would make one observation. The secretary or the author of those minutes -- words mean different things to different people. I don't know what the word "strong" meant to her.

Q. You don't deny that you made that statement that Mr. Ronai had been asked to make the letter as strong as possible?

A. No. Probably in response to something that was said, and I acknowledged it because I was the communicating official to Mr. Ronai. So if I was asked to do it, I probably said I would do it. And in the recording secretary's opinion, that's the conclusion she summed it up in. I don't remember the details.

(Transcript of Deposition of George W. Plaskowitz, pages 105 and 106)

36. The By-Laws, Rules and Regulations of theMedical Staff of Milford Hospital, Article VIII, Section Ia, provided that when any practitioner receives notice of a recommendation which, if ratified by a decision of the governing body will adversely affect his appointment to or status as a member of the Medical Staff, or his exercising of clinical privileges he shall be entitled to a hearing before the Ad Hoc Committee of the Medical Staff. The Plaintiff requested a hearing under the foregoing provision of the By-Laws, Rules and Regulations of the Medcial Staff.

37. Article VIII. Section IIIb of the By-Laws, Rules and Regulations of the Medical Staff of Milford Hospital that, " the notice of hearing shall state in concise language the acts or omissions with which the practitioner is charged, a list of specific or representative charts being questioned, and/or the other reasons or subject matter that was considered in making the adverse recommendation or decision."

38. The notice of hearing to Dr. Schlein, given by the Defendant Hospital on December 28, 1973, did not comply with Article VIII, Section IIIb.

39. Article VIII, Section Vh provides, in part,

> "The Executive Committee, when its action has prompted the hearing, shall appoint one of its members or some other medical staff to represent it at the hearing, to support the facts of its adverse recommendation and to examine witnesses" . . . . . "it shall be the obligation of such representative to present appropriate evidence in support of the adverse recommendation or decision" . . . . .

40. The Medical Staff appointed Dr. Robert Kerin, who acknowledged previously on the records of the Credentials Committee that he had a conflict of interest for two reasons: a) He is an orthopedic surgeon, the same specialty as the Plaintiff, Dr. Schlein, and b) His associate, Dr. Peter Naiman, appeared and testified before the Credentials Committee.

41. Dr. Kerin, as representative of the Medical Staff, at the Ad Hoc hearing, January 3, 1974, did not present any facts in support of the adverse decision, did not examine witnesses and did not submit appropriate evidence in support of the adverse recommendation. (See Ad Hoc Commmittee Transcript, January 3, 1974, on file)

42. The Medical Staff representative, Dr. Kerin, at the Ad Hoc Committee hearing presented only ex-parte documents in the form of letters which did not state facts, but conclusions, opinions and hearsay.

43. Article VIII, Section Vi, of the By-Laws, Rules and Regulations of the Medical Staff of Milford Hospital, provides as follows:

> "The affected practitioner shall have the following rights: to call and examine witnesses, to introduce written evidence, to cross-examine any witness on any matter relevant to the issue of the hearing, to challenge any witness and to rebut any evidence. If the practitioner does not testify in his own behalf, he may be called and examined as if under cross examination."

44. The rights accorded Dr. Schlein by Article VIII, Section Vi, to examine witnesses, to cross examine any witness relevant to the issue of hearing, to challenge any witness and to rebut any evidence was effectively destroyed by the failure to produce witnesses.

45. Dr. Schlein was denied the right of confrontation and cross examination.

46. Dr. Schlein objected to hearsay statements such as Dr. Kerin relating a telephone conversation with Dr. Coventry, stating, " I don't think that is acceptable". (Ad Hoc Committee Transcript, January 3, 1974, page 23)

47. Dr. Schlein was examined regarding Dr. Coventry's letter by Dr. Corsaro as to what Dr. Coventry meant in his letter, to which Dr. Schlein replied, "I can't read his mind." "Well, I don't know what he means by that. It leaves me in as much a blank as you are, sir." (See Ad Hoc Committee Hearing, January 3, 1974, pages 26, 27)

48. Dr. Schlein could not explain Dr. Coventry's letter, which the Committee accepted to be true and Dr. Schlein was not able to cross examine Dr. Coventry; however, he did relate that there was a personal difference with him on a strictly personal matter. (See also, Ad Hoc Committee Transcript, January 3, 1974, page 28)

49. Dr. Kerin wanted to keep the hearing of January 3, 1974 before the Ad Hoc Committee on a general basis; however, Dr. Schlein requested that it be put on a specific basis. At the time of the Ad Hoc Committee hearing on January 3, 1974 and during the course of the hearing, Dr. Schlein was first apprised of what the specifics contained in the letters were, which resulted in the adverse recommendation, to which he had to defend and refute. (See Ad Hoc Committee Transcript, January 3, 1974, pages 28, 29 and 30)

50. Dr. McCreery wrote that he felt that in view of a lack of knowledge of Dr. Schlein, he was not in a position to give a recommendation, which was considered as a non-recommendation. (See Ad Hoc Committee Transcript, January 3, 1974, pages 32, 33)

51. Dr. Schlein commented that he stated he does not know me and I don't know him. (Ad Hoc Committee Transcript, January 3, 1974, pages 32, 33)

52. A letter from Dr. Anthony Camarda was introduced by Dr. Kerin, which was characterized by Dr. Schlein as being written from personal motivations and was challenged as to its reliability and content by Dr. Schlein and written as a result of personal differences arising out of a business relationship. (See Ad Hoc Committee Transcript)

53. A further ex-parte statement of Dr. Walter Shanley was introduced which Dr. Schlein objected on the basis that there was not a single specific reason given in the entire letter and further he only shook hands with Dr. Shanley once. (Ad Hoc Committee Transcript , January 3, 1974, pages 40, 41)

54. Dr. Schlein vigorously objected to Dr. Shanley's letter stating, "So, Dr. Shanley, since I have left Doctor Camarda's employ, could never have seen me operate, period. I have never seen him, never talked to him. There are no specific grievances in here, no specific acts, no specific anything in this letter.

I agree with you that it is definitely a negative letter.

As we will go on, I will discuss that there is an association with Doctor Shanley, however, it has never been a personal one -- all right -- and I have never talked to the man and he has never seen me operate." (See Ad Hoc Committee Transcript, January 3, 1974, pages 42, 43)

55. A further ex-parte letter was introduced by Dr. Kerin from Dr. Siegel and bitterly and hotly contested that it had anything to do with his professional competence, reputation and was purely on a relationship of personal employment differences regarding promising of employment, which induced him to work for the Strauss Group. (See Ad Hoc Committee Transcript, January 3, 1974, pages 47, 48, 49, 50, 51, 55 and 56)

56. Article III, Section V, Subsection 3 of the By-Laws, Rules and Regulations of the Medical Staff of the Defendant Hospital provided:

> "The credentials Committee shall investigate the character, qualifications, references and standing of the applicant and shall submit a report of findings to the Medical Staff as soon as possible, and in all cases within three months, recommending that the application be accepted, deferred, or rejected. All proposed recommendations for new appointments shall be submitted by the Credentials Committee to the Medical Staff for approval at a regular Medical Staff meeting. Where a recommendation to defer is made, it must be followed by one to accept or reject the applicant at the next meeting of the Medical Staff. Any recommendations for appointment should include a delineation of privilege.

57. Nicholas Coassin, M.D., was a member of the Credentials Committee of the Milford Hospital, Inc. in connection with the application of the Plaintiff. The deposition of Dr. Coassin was taken and in the deposition, which is on file, he testified that:

a) It would make a difference if Dr. Camarda's letter of recommendation was the result of a personal difference between Dr. Schlein and Dr. Camarda. (Deposition of Nicholas Coassin, M.D., August 26, 1975, page 23)

b) The reason behind Dr. Camarda's letter was not investigated by the Credentials Committee. (Dr. Nicholas Coassin Transcript, page 23.)

c) Subsequently, it was determined that the letter was written as a result of a personal difference between the Plaintiff and Dr. Camarda. (Dr. Nicholas Coassin Transcript, page 23, 24)

d) The Credentials Committee, in connection with the processing of the application of Dr. Schlein for privileges, are charged with investigating the applicant, did not investigate as to the reasons or specifics as to any statements or letters made or written by Dr. Coventry. (Dr. Nicholas Coassin Transcript, page 24).

e) Dr. Coassin testified that the Credentials Committee is charged with the duty to investigate the precise nature of a complaint and the conduct involved which would be of significance in investigating the suitability of the applicant for hospital staff privileges. (Dr. Nicholas Coassin, Transcript, page 24,25)

f) Dr. Coassin testified that in fairness to the applicant, it would be important to determine the background for the lack of a good letter of recommendation or determine upon which it was predicated or based, but it was not done in the Plaintiff's case. The testimony is as follows:

Q. As a result of Dr. Camarda's letter, was any investigation made by a member of the Credentials Committee to determine the nature or the reason for the letter?

A. Not to my knowledge.

Q. Isn't it the duty of the Credentials Committee to investigate and to determine the facts concerning the applicant? I would assume also to determine the factual background which would give rise to such a letter?

A. Once again this is more easily said than done. If someone writes a letter and does not recommend an individual, it could be very difficult to go over and interview him for an hour or two to see why. I don't think that is done in practice by anyone, even the medical staff.

Q. In fairness to the applicant, would it not be important to determine the background for the lack of the good letter of recommendation or determine upon what it is predicated or based?

A. It is important.

Q. But it is not done?

A. It wasn't done."

(Dr. Nicholas Coassin, Transcript, page 32)

g) Dr. Coassin testified that there were no specific facts or factual pattern that was known, such as written complaints and charges preferred against Dr. Schlein, at any time, at the Mayo Clinic or any prior associations of Dr. Schlein that were in the possession of the Credentials Committee. (See Nicholas Coassin, M.D., Transcript, page 35)

h) Dr. Coassin testified that the failure of Dr. Glass and Dr. Dworkin to write a letter of recommendation was not a reason for the denial of the Plaintiff's application. (See Nicholas Coassin, M.D., Transcript, page 39)

i) Dr. Coassin testified that as a result of a meeting of the Credentials Committee of November 23, 1973, with Dr. Schlein, that Dr. Camarda's letter could not be relied upon and that the Credentials Committee were impressed by Dr. Schlein's manner, his ability to answer questions, and felt that he would be an asset to the community. (Nicholas Coassin Transcript, page 41)

i-1) The minutes of the Credentials Committee of November 23, 1973, page 2, states, " . . . . . the Credentials Committee felt that Camarda's letter could not be relied upon . . . ."

j) Dr. Coassin testified that there was no investigation by the Credentials Committee to determine the basis of the letter from Dr. Walter Shanley. (Nicholas Coassin, M.D., Transcript page 43)

k) Dr. Coassin testified that the Credentials Committee, the Medical Staff or Executive Committee of the Milford Hospital did not investigate into the background of the letter from Dr. Siegel and there was no determination as to the facts or the reasons for the letter. (Deposition of Nicholas Coassin, M.D. September 2, 1975, page 49, 50)

l) Dr. Coassin testified that the Credentials Committee did not give an adverse recommendation to deny hospital staff privileges to the Plaintiff based upon clinical competency. (Nicholas Coassin, Transcript, page 54).

m) Dr. Coassin testified that competence was not the problem, that it never was. (Nicholas Coassin, M.D., Transcript, page 55)

n) Dr. Coassin testified that the Credentials Committee did not investigate as to whether or not Dr. Shanley had any personal knowledge as to the applicant and the only knowledge of the relationship between Dr. Schlein and Dr. Shanley was in Dr. Shanley's letter. (Nicholas Coassin, M.D., Transcript, page 56, 57)

o) Dr. Coassin testified that the Credentials Committee did not conduct any investigation as to any factual background for Dr. Shanley's letter. (Nicholas Coassin, M.D., Transcript, page 57)

p) Dr. Coassin testified that neither the Credentials Committee, the Executive Committee or the Medical Staff conducted a factual investigation as to any experiences of Dr. Schlein at Mayo Clinic in regards to patient complaints, colleague complaints. (Nicholas Coassin, M.D., Transcript, page 63)

q) Dr. Coassin testified as a member of the Credentials Committee that he could not cite one instance of abrasive behavior on the part of Dr. Schlein which resulted in his being denied hospital staff privileges at the Defendant, Hospital. (Nicholas Coassin, M.D., Transcript, page 66)

r) Dr. Coassin testified that as a member of the Credentials Committee he had no knowledge as to whether or not the explosive behavior referred to in Dr. Siegel's letter was in relation to personal or professional matters. (Nicholas Coassin, M.D., Transcript, page 67)

58. Dr. Siegel, whose deposition was taken on July 8, 1975, testified in regards to Dr. Schlein, as follows:

MR. BENNETT; Q. And in his association there with you, did you work well with Dr. Schlein in your orthopedic duties there?

A. Insofar as we worked together, we worked well together.

Q. Fine. And Weiss Memorial is a pretty busy hospital, isn't it, Doctor?

A. It is quite busy.

(Irwin M. Siegel, M.D., Transcript, page 6)

a) Dr. Siegel testified that to his knowledge, no hospital personnel, referring to nurses, thereapists and employees of the hospital ever regustered a written complaint against Dr. Schlein. (Siegel transcript, page 8)

b) Dr. Siegel further testified that Dr. Schlein, while associated with the Weiss Memorial Hospital and an employee of the Strauss Medical Group was on the staff of the University of Illinois, College of Medicine, Department of Orthopedic Surgery and the Chairman of the Department was Dr. Robert Ray. Dr. Ray is recognized in the field of orthopedic surgery as a prominent figure and an expert. The testimony is as follows:

Q. Do you know a Dr. Robert Ray?

A. Dr. Robert Ray is Chairman of that department.

Q. And do you know whether or not Dr. Schlein worked under Dr. Ray?

A. I assume he did if he was on the staff of the department.

Q. And who is Dr. Ray?

A. Dr. Ray is the Chairman of the Department of Orthopedic Surgery at the University of Illinois, College of Medicine.

Q. Is he recognized in the Orthopedic field as a prominent figure?

A. He is indeed.

Q. And an expert in the area?

A. He is indeed.

(Irwin Siegel, M.D., Transcript, page 10)

Q. To your knowledge, if Dr. Ray is an expert in the field of Orthopedics, would it be your opinion that he would engage people who were not competent?

MR. PARESE: Objection. This witness has no way of knowing.

THE WITNESS: A. I don't know whether - -

MR. BENNETT: I said based upon his reputation.

A. On his reputation, I would assume that based upon his reputation, Dr. Ray would have good judgment in this area.

Q. Now, have you read the letter of recommendation, Dr. Schlein Exhibit 1, for identification, that I just showed you?

Letter of Dr. Ray to Milford Hospital, dated September 7, 1973, regarding Dr. Schlein.

A. I have.

Q. And whether or not you would subscribe to what Dr. Ray says in this letter?

A. You're asking me if I agree with the letter.

Q. Yes.

A. Well, most of the letter is factual, and facts which I have no access to, not having been present at the time. The part of the letter that is nonfactual and I quote, "As far as I could ascertain, he is clinically competent, he has originality," et cetera, I would agree with.

(Irwin Siegel, M.D., Transcript, pages 11, 12)

Q. Would you consider Dr. Robert Ray one of the outstanding men in Orthopedics in this area?

A. I would indeed. He happens to be my chief, and I've written papers with him, and I would agree that Dr. Robert Ray is an outstanding orthopedic surgeon.

Q. And does he enjoy a national reputation, also?

A. He enjoys an international reputation.

(Irwin Siegel, MD., Transcript, page 12)

c) Dr. Siegel testified, on cross examination by defendant's counsel that the complaints by patients regarding Dr. Schlein were average as compared to other surgeons. (Irwin Siegel, M.D. Transcript, page 15,16)

d) Dr. Siegel testified that he could not recall a specific instance of explosive behavior, but any reference to it related to personal frustrations on the part of the Plaintiff and the comparison that he used was a personal standard and further, other physicians might react the same way Dr. Schlein did. (Irwin Siegel, M.D., Transcript, page 25, 26)

e) Dr. Siegel testified that he did not consider Dr. Schlein's behavior to be of such a nature that he would be compelled to say because of Dr. Schlein's behavior, he should not be given privileges at a hospital. (Irwin Siegel, M.D., Transcript, page 26,27)

f) Dr. Siegel also testified that patients at the Weiss Memorial Hospital also complained about his own conduct as they did about Dr. Schlein's, which was not uncommon. Testimony follows:

Q. And have patients at Strauss Memorial complained about you?

A. At Weiss Memorial.

Q. Weiss, I'm sorry.

A. I answered that question before, Mr. Bennett,

Q. I think you did, yes.

A. An my answer was yes.

(Irwin Siegel, M.D., Transcript, page 27)

And further,

Q. 16 years. And is it a common thing for patients to complain against their doctors?

A. Is it a common thing for patients?

Q. Well, is it done?

A. I believe so.

Q. And have patients complained about you?

A. Yes.

(Irwin Siegel, M.D., Transcript, page 8)

59. The letter of Anthony L. Camarda, M.D., Acting Chief of Orthopedic Surgery at Park City Hospital was considered by the Credentials Committee on November 23, 1973, at which time a meeting was held between the Plaintiff and said Committee. The

Credentials Committee voted that the letter could not be relied upon (See Minutes Credential Committee, November 23, 1973)

60. The evaluation of Dr. Schlein's clinical experience received from St. Vincent's Hospital, referred to in the first reason for Dr. Schlein's denial of a positive recommendation, set forth in a letter of December 28, 1973, was from Dr. Walter Shanley. The record of the proceedings before the Defendant Hospital demonstrats that the letter was retracted, in writing, on February 8, 1974, by Dr. Shanley. At the Appellate Review Hearing, defendant's counsel, Stephen E. Ronai, who is secretary of the Board of Directors of the Defendant Hospital, stated the following in regards to Dr. Shanley's letter:

> "I only wish to convey, but it is not only my opinion, but the opinion of the committee, that the fact that the statement has been withdrawn in writing under his signature is an indication that the declarant of the statement is undercutting his own veracity in withdrawing the statement. And that is, in itself, an admission casting serious doubt on the basis of the statement. So that's not too much of an issue. And in terms of that, we want to determine the circumstances of this and if in fact it was not so and you were privileged to file a complaint, this was your right. It may have entered into it, it may not have, but the fact is that it has been withdrawn. it is technically no longer in the case. (emphasis added)

(See Minutes of Executive Committee of the Board of Directors, February 27, 1974, page 24)

61. In the record of the Executive Meeting of the Board of Directors, of Milford Hospital, on February 27, 1974, the Chairman of the Ad Hoc Committee, Dr. Weston stated that the most damaging thing comes from Dr. Shanley. (Minutes of Appellate Review hearing, page 59)

62. At the Ad Hoc Review held on January 3, 1974, at page 88, Dr. Barney, a member of the Ad Hoc Committee stated "the most damaging thing comes from Dr. Walter Shanley." (Transcript of Ad Hoc Committee Hearing, page 88)

63. The letters from Dr. Camarda and Dr. Shanley were not considered in the final decision in the denial of Dr. Schlein's application for hospital staff privileges.

64. The second reason stated in the letter of denial of hospital privileges of December 28, 1973, from George Plaskowitz regarding Dr. Schlein's evaluation of his professional conduct and current and past hospital associations which developed a substantial record that his behavior in performance of his professional duties demonstrated difficulty in working well with patients as well as with members of the other various medical staffs on which he served, is without foundation in record and not based upon any factual evidence. (See Depositions of Dr. Coassin and record of proceedings before Hospital)

a) The Defendant, in its Answer to the Plaintiff's Interrogatories regarding specific facts or incidents relating to the conduct of the Plaintiff refer to an event concerning a nurse at Park City Hospital, Nora Buckley. The transcript of the Ad Hoc Committee hearing on January 3, 1974, refers to that incident and Dr. Kerin, Chairman of the Credentials Committee and the

Medical Staff representative prosecuting the case for the Medical Staff stated on page 77 "I will have to come to the defense of Dr. Schlein" and on page 78, Dr. Kerin states, "for whatever it is worth to the Ad Hoc Committee, to a man, we were satisfied that this would not be blown out of context, that he had a perfect right to throw an instrument under the circumstances that prevailed, and it should be let go at that." Then Dr. Scully, a member of the Ad Hoc Committee stated, "who of us who have been in surgery, have not thrown an instrument." This incident, obviously, was not considered as a reason for the denial of the Plaintiff's application for hospital staff privileges. (emphasis added)

b) There were no facts or evidence before the Defendant Hospital that Dr. Schlein's professional conduct in current and past hospital associations developed a substantial record that his behavior in the performance of his professional duties demonstrated difficulty in working well with his patients as well as other members of the various medical staffs on which he served. See testimony of Dr. Schlein in the Ad Hoc Transcript of January 3, 1974. See testimony of Dr. Coassin, a member of the Credentials Committee on page 63 of his transcript wherein he testified that there was no factual basis concerning Dr. Schlein's conduct or evaluation and further, on page 66 wherein he could not cite one instance of abrasive behavior which resulted in Dr. Schlein being denied hospital staff privileges. See letters submitted on Dr. Schlein's behalf from staff members at Park City Hospital, attached hereto.

65. The third reason assigned for his denial in the letter of December 28, 1973, indicates that the pattern of abrasive behavior with respect to fellow staff members at other hospitals as well as other facts developed in the record, raised substantial doubts that he possessed the demonstrated competence, good reputation and ability to work well with others.

a) The record and testimony in the transcripts demonstrat that the letters of Dr. Shanley and Dr. Camarda were not relied upon.

b) Despite a stated reason that substantial doubts were raised as to his good reputation, there is no evidence or facts in the record at this time to demonstrate that Dr. Schlein's reputation is an issue. The record of the hospital contains hearsay statements concerning Dr. Schlein's reputation, containing favorable comments as to his good character, honesty and ethical standards.

c) Notwithstanding the stated reason that there were substantial doubts concerning Dr. Schlein's demonstrated competence, no facts or evidence are present in the record to refelct that his denial was based upon lack of competence. See deposition of Nicholas Coassin, M.D., wherein he testifies that no clinical evaluation was made as to Dr. Schlein's competence; a stipulation of defendant's counsel that competence was not an issue; statements in the minutes of the Ad Hoc meeting that competence was not an issue and minutes of Appellate Review wherein it was stated that competence was not an issue.

66. Due to the withdrawal of Dr. Shanley's letter and a subsequent letter being written, dated February 8, 1975, the Appellate Review Commission of the Defendant adopted a resolution at its February 27, 1974 meeting to refer the application of the Plaintiff for privileges at Milford Hospital to the Medical Staff for further consideration, review and recommendation.

67. The Medical Staff referred the application of Allen P. Schlein for privileges to the Ad Hoc Committee to reconsider the recommendation of the Credentials Committee and the Medical Staff, in light of the change of status of the evidence. The Ad Hoc Committee considered the withdrawal of Dr. Shanley's original letter and the letter of recommendation addressed to Robert Kerin, M.D., dated February 8, 1974 and apparently disregarded the withdrawal of the previous letter without further hearings, investigation and/or findings.

68. Dr. Robert Kerin, Chairman of the Credentials Committee, testified that as a result of the withdrawal of Dr. Shanley's letter dated February 8, 1974, that the Medical Staff meeting of April 15, 1974 in regards to acceptance or rejection of the Ad Hoc Committee's recommendation, that, "at that meeting for purposes of the vote, as I recall, it was felt that Dr. Shanley's letter would have to be deleted, that he had written two letters: one being disinclined to endorse Schlein, and another endorsing him. So that it was felt that Shanley's remarks should be excluded...." (Deposition, Robert Kerin, M.D., February 14, 1975, page 161)

69. Dr. Robert Kerin, Chairman of the Credentials Committee, testified that the Credentials Committee, Board of Directors or

Medical Staff, as of April 15, 1974, had no specific examples of complaints by any pateitn, doctor, nurse or hospital employee in the Strauss Group about Dr. Schlein. (Robert Kerin, M.D., Transcript, page 164)

70. Dr. Kerin testified that the letter from Weiss Memorial Hospital, dated November 14, 1973, from Mortimer Zimmerman, Administrator, was considered a point of information and to Dr. Kerin's impression, it was given no weight by the Committee. The letter received provides as follows:

> "In regard to your recent inquiry, this will confirm that Dr. Schlein received a courtesy appointment to the Department of Orthopedics on July 1, 1970, and subsequently resigned from the staff in March of 1972. He came to Weiss Hospital to join the Strauss Surgical Group, with which group he was affiliated during his entire stay at the hospital. When he left that group, his resignation was automatic under the terms of his association with them.
>
> Our records show that during the entire time of his staff appointment, he was a member in good standing at the hospital, and carried out his responsibilities both to the medical staff and to the hospital. He came to Weiss directly from a residency program at Mayo's, and we felt that he gained much both in experience and relationships during the short time he was with us. He certainly had had excellent training, and his ethical and professional standards were considered satisfactory."

Dr. Kerin's testimony, regarding Mr. Zimmerman's letter is as follows:

Q. And whether or not the record contains a letter from the Executive Director of the Weiss Hospital with reference to Dr. Schlein's application?

A. The question please?

Q. Does the record contain a letter from the director of that hospital to you? I show you a letter of November 14th.

A. Yes.

Q. You solicited this letter from Dr. Weiss, did you?

A. Not by name.

Q. But did you write to the hospital out there for some information on Dr. Schlein?

A. Yes.

Q. And this is the response?

A. Yes.

Q. This letter of November 14th?

A. Yes. May I read it?

Q. Oh, I'm sorry. Go ahead. Was this letter considered in the deliberations of the Credentials Committee at all, Doctor?

A. It was read before the Credentials Committee.

Q. Whether or not it was given any weight?

A. It's my recollection that it was more a point of information than anything else.

Q. And as a point of information, it was given no weight by the Committee other than as informative?

A. Again, I can't speak for the committee. That's my impression.

(Transcript, Robert Kerin, M.D., page 165, 166)

71. Dr. Robert Kerin, Chairman of the Credentials Committee, called Dr. McCreery of Bridgeport Hospital and Dr. Shanley. Dr. Kerin testified that he told Dr. McCreery that he had been instructed to call him and request a positive letter on behalf of Dr. Schlein and he had essentially the same conversation with Dr. Shanley. Transcript provides as follows:

Q. What was your conversation with Dr. McCreery?

A. Pardon me?

Q. What was your conversation with Dr. McCreery?

MR. RONAI: Objection.

Q. What did you ask Dr. McCreery?

A. I told him that I had been instructed to call him and request a positive letter on behalf of Dr. Schlein.

Q. Was that it, was that the extent of the conversation?

A. As I recall it.

Q. And with Dr. Shanley?

A. Essentially the same.

(Robert Kerin M.D., Transcript, page 159)

72. Dr. Walter Shanley, in his deposition of May 5, 1975, concerning the same telephone conversation questions whether Dr. Kerin was looking for a positive letter of recommendation and testifies as follows:

Q. And what did Dr. Kerin say when he called you?

A. Dr. Kerin called me and he told me the situation that had developed out in Milford Hospital --.

Q. Exactly what do you mean by "situation that had developed"?

A. Well, apparently Dr. Schlein had applied for privileges prior to this telephone conversation with me, and there was a question as to his credentials.

Q. Did Dr. Kerin say exactly what the problem was with his credentials?

A. I can't remember exactly. Yes, there was some question, otherwise he wouldn't be calling me. And he also stated he was calling on other physicians in the Bridgeport area to check on Dr. Schlein -- his credentials, that is.

And he asked me, after giving me sort of a brief description of the situation that had developed up to that point, whether I would recommend his to the staff of Milford Hospital or not, and what I thought of him.

Q. Did he say what had developed up to that time in the Milford Hospital?

A. Well, he gave me a little backgroud on Dr. William Lewis, his associate, who had applied over at Milford Hospital previously and apparently had gotten some temporary privileges there, which were revoked. And now he told me how Dr. Schlein, his associate, was trying to get privileges.

He did tell me that they had opened an office up in Milford, and he did tell me that there was some dissatisfaction with the staff and himself concerning these two doctors, and they were concerned about exactly what they wanted from Milford Hospital and what they intended to do there. And he asked me if I would recommend him to their staff.

And further,

Q. Did he say exactly what the dissatisfaction was with the staff at Milford Hospital and himself?

A. Well, he did state that there was no question there was dissatisfaction with the very short appearance that Dr. Lewis had made on the scene in Milford. They were not satisfied with him at all. They asked him to leave the hospital. He didn't give me the details. They took away his temporary privileges.

Now, Dr. Schlein is an associate of Dr. Lewis. They are within the same professional corporation. Dr. Schlein essentially represents Dr. Lewis' corporation and his own, as one corporation, Bridgeport -- no, it's Orthopedic Associates, P.C., and I think he was concerned that one would represent the other. And as he put it, "We're dissatisfied with Dr. Lewis. I think Dr. Lewis is trying to sneak in the back door of Milford Hospital by putting up Dr. Schlein".

(Walter T. Shanley, M.D., Transcript, May 5, 1975, pages 4, 5, 6, 7)

And further,

Q. In your conversation with Dr. Kerin, after relating your information you had concerning Orthopedic Surgery Associates, did Dr. Kerin ask you to write a letter because it would help in the denial of the application of Dr. Schlein?

A. He said,"Walter, I just wish you would help us out. And if you can write a letter to that effect," he said, "we would really appreciate it."

(Walter T. Shanley, M.D., Transcript, page 63)

And further,

Q. Did he at any time ask whether you could write a positive letter of recommendation?

A. He didn't state for me to write a positive or negative letter. He asked me to give him or them, the committee, an opinion concerning Dr. Allen Schlein.

(Walter T. Shanley, M.D., Transcript, page 70,71)

73. Dr. Shanley also testified that he had met Dr. Schlein once at an Orthopedic meeting in Bridgeport and the extent of the meeting was introduction, a few words exchanged and a hand shake and that was it. (Walter Shanley, M.D., Teanscript,. page 8)

74. Daniel A. Johnson is Vice President of the Board of Directors of the Defendant, Milford Hospital and Chairman of its Executive Committee. He testified at his Deposition on September 11, 1975 that the Board of Directors of the Defendant Hospital did not make an independant investigation in regards to the application of Allen P. Schlein.

75. Daniel Johnson testified that the reasons for the denial as set forth in the letter of December 28, 1973, were the reasons that the Board of Directors ultimately denied Dr. Schlein privileges at Milford Hospital. (Daniel Johnson, Transcript, page 13)

76. Daniel Johnson, Vice President of the Board of Directors and a member of the Appellate Review Committee, testified that the Board of Directors did not exercise independent judgment and accepted the recommendation to deny privileges without independent judgment and that the Board of Directors did not have any facts upon which they could evaluate Dr. Schlein's professional conduct in other institutions. Testimony follows:

Q. Your action was merely accepting what they said?

A. Yes, sir.

Q. That is what I am interested in, whether you exercised independent judgment, and whether you accepted what they said. The answer is --.

A. Yes.

Q. You accepted what they said?

A. Basically yes.

Q. You didn't exercise independent judgment? When I say "you", I mean your Board.

A. That's right.

Q. Did you have any facts? Now I am speaking about facts, Mr. Johnson. When I say "you", again I mean your Board. I don't mean you personally alone. Did you have any facts before you upon which you could evaluate his professional conduct in other institutions?

A. No. I don't think we are qualified., I don't consider myself or other members of our Board qualified to exercise judgment in this area.

(Daniel Johnson, Transcript, page 16, 17)

77. Daniel Johnson further testified the only thing substantial in the Defendants' Board of Directors' decision to deny hospital staff privileges to the Plaintiff was the recommendation of the Credentials Committee. Transcript as follows:

A. No. The only thing that was substantial in our decision to deny the privilege of the hospital to Dr. Schlein was the final recommendation of the Credentials Committee. Their recommendation, I am sure, was made --.

And further,

Q. (By Mr. Bennett) Your answer goes back to what I said before, it is their judgment and not the judgment of the Board that we are talking about?

A. Yes, but the responsibility is the Board's.

Q. I am talking about the judgment that was made, I understand that it is their judgment not yours.

A. That's right.

(Daniel Johnson, Transcript, page 18, 19)

78. Daniel Johnson further testified that the action of the Board of Directors was a rubber stamp decision of the Credentials Committee.

Q. Are you telling us your decision in ultimately rejecting Dr. Schlein was made on that type of information which was furnishe

A. No, I am not. I will say over again that our decision was based upon the recommendation of the Credentials Committee.

Q. Really, it is a rubber stamp decision.

A. If you want to address it that way.

(Daniel Johnson, Trascript, page 23)

And further, at page 30, 31, that the Board never questioned Dr. Schlein's ability as a physician and took carte blanche whatever the Credentials Committee said.

Daniel Johnson testified that the Executive Committee of the Board of Directors of the Defendant Hospital followed the recommendation of the Credentials Committee and Medical Staff for the follwoing reason, as quoted in his deposition at page 40:

> THE WITNESS, ... Finally, we followed the recommendation because, after that period of time, it bacame quite clear that for whatever basic reasons, I don't know what it was, that Dr. Schlein unfortunately was unacceptable to this group. So in searching in my own mind, I have nothing personal against Dr. Schlein at all.

79. The Defendant, Milford Hospital, Inc. is required to be licensed by the State of Connecticut, Department of Health, pursuant to the Connecticut General Statutes, Section CGS 19-33, et seq.

80. The State of Connecticut Public Health Code, section 19-13D (2) through 19-13-12 are applicable to all hospitals licensed under Conn. Gen. Stat. 19-33, et seq. and requires the Defendant Hospital to adopt by-laws, rules and regulations which include medical staff by-laws for the selection of physicians for hospital staff privileges.

81. Section 19-13D(3) of the Health Code requires the Defendant Hospital: The Code determines the requirements of the physical plant of each hospital by extensive regulations. The state is involved in the administration of the hospital by requiring:

a) adoption of by-laws, rules and regulations including medical staff by-laws;

b) annual appointment of medical staff;

c) appointment of a competent hospital administrator ...

The Code further requires:

a) method of control of privileges granted to members of the medical staff;

b) methods of control of clinical work including written consultations for all clinical services as required by the Commissioner of health;

c) procedures for recommending appointment to the medical staff and for hearing complaints regarding the conduct of members in referring the same, with recommendations to the governing board.

82. The State of Connecticut determines whether there will be hospitals in any particular geographic area and the number of hospitals, pursuant to Conn. Gen. Stat. 19-36.

83. The Milford Hospital, Inc, is subject to the Conn. Gen. Stat. and State Health Code in respect to all pertinent provisions of the State Public Health Code as it applies to acute care centers, as the Defendant. (See Deposition of George Plaskowitz, June 2, 1975, page 18)

84. The State of Connecticut Public Health Code regulates medical records, nursing care, diagnostic and therapeutic services, pharmacy, dietary services, laundry services, heating, lighting, emergency services, maternity and infection control at Milford Hospital. (Deposition of George Plaskowitz, page 18, 19)

85. There are two plans within the State of Connecticut which divide up hospitals into geographical areas; one, the emergency medical services division and the second being the health service areas under federal legislation. (See Deposition George Plaskowitz, page 23)

86. The Connecticut state plan for the construction of hospitals and medical facilities is in effect, in Connecticut, with the intention to make sure that whatever construction goes on in whatever hospital, is within the needs of the community. (See Deposition George Plaskowitz, page 24)

87. The Milford Hospital, Inc. is part of a comprehensive health planning area, within the State of Connecticut, known geographically as South Central Valley, which the United States Government considers the Milford Hospital, Inc. to be in. (See Deposition George Plaskowitz, page 25)

88. The Milford Hospital, Inc, is subject to the provisions of the Commission on Hospital and Health Care Act of the State of Connecticut which regulates the manner in which a hospital is operated within the State of Connecticut. (See Deposition, George Plaskowitz, page 30, 31)

89. The Milford Hospital, Inc. cannot make capitol expenditures in excess of a certain sum, without approval of the Commission on Hospital and Health Care. The Commission on Hospital and Health Care of the State of Connecticut regulates the charges the defendant hospital can make for emergency room services; operating room charges; anesthetists; x-rays; nursing care; prescriptions for patients and controls the charges the defendant hospital may make to patients in almost every area of the hospital. (See Deposition George Plaskowitz, page 34, 35)

90. The Commission on Hospital and Health Care extensively regulates the charges that the defendant hospital can charge its patients. (See Deposition George Plaskowitz, page 35, 36)

91. The Milford Hospital is primarily concerned with the rendering of health care to the public within the geographic area of the City of Milford. (See Deposition of George Plaskowitz, page 37)

92. Federal regulations known as the Profession Standards Review Act are in full force and affect at the Milford Hospital, Inc. (See Deposition George Plaskowitz, page 37, 38)

93. The Profession Standard Review Act - 2 (PSRO-2) legislation involves a continuing review process of the need for acute hospital care center within the geographic area and the quality of care the patient receives during his hospital stay. (See Deposition, George Plaskowitz, page 39)

94. The PSRO-2, in reviewing the quality of health care at the Milford Hospital also includes the review of physicians practicing at the hospital and the quality of care a patient receives is interwoven with physician care. (Deposition, George Plaskowitz, page 39)

95. Medical care cannot be rendered by the defendant hospital without a physician and thus, when there is a review of the quality of care by the PSRO-2 or the State Commission on Hospital and Health Care and/or the State Department of Health, the review in effect, is a review of the physician because he is the one who is giving the health care. (See Deposition George Plaskowitz, page 40)

96. The Professional Standards Review Organization -2 relates to the quality of care to be maintained at the Milford Hospital, Inc. and involves the hospital staff and the physicians directly. (See Deposition, George Plaskowitz, page 43)

97. The Deposition of Fred Warren, President of the Milford Hospital and Chairman of the Board of Directors, taken on September 11, 1975, testified that at the time the Board of Directors made their decision to dany the Plaintiff privileges, it had no

way of determining whether anything contained in any of the letters was true. He testified as follows:

Q. At the time they made the decision, your Board had no way of determining whether anything that was in the letters they were considering was true?

A. We assumed them to be facts, but to answer your question did we know, no, we did not.

Q. The Board did not know whether it was true or not?

A. Correct

(Fred Warren, September 11, 1975, Transcript, page 56)

98. At the time of the Plaintiff's application, Dr. Robert Kerin and Dr. Peter Naiman were the only orthopedic surgeons holding full hospital staff privileges in orthopedic surgery at the Milford Hospital, Inc. and had a monopoly in the field of orthopedic surgery at the Milford Hospital, Inc., in the City of Milford.

99. The Deposition of Dr. John A. Elstrom was taken. Dr. Elstrom is an orthopedic surgeon practicing in Chicago, Illinois and is associated with the Department of Orthopedic Surgery at Cook County Hospital and the University of Illinois. He is Chairman of the section of reconstructive orthopedic surgery at Cook County Hospital. He was a resident in orthopedic surgery at Mayo Clinic. He is also Assistant Professor in the Department of Orthopedics at the University of Illinois. Dr. Elstrom testified that he knew Dr. Schlein for three (3) years at Mayo Clinic and worked under him as a junior resident. He testified as following concerning Dr. Schlein's reputation, competence and ability to work well with others:

Q. From your own personal knowledge what was Dr. Schlein's reputation among the orthopedic staff at the Mayo Clinic while you were there?

A. Dr. Schlein had an excellent reputation as a very intelligent, inquiring, bright orthopedist who is very interested in biomechanical-type investigations. He was known as a good clinician and a competent surgeon.

Q. You say he was known as a good clinician. Would you explain that, please?

A. Well, he was very thorough in his work. He exhibited an outstanding knowledge of orthopedics.

Q. Is this your own impression or is this the reputation he had among others?

A. Well, it was my impression, and I think it was his reputation among others.

Q. Did you have occasion to work with him in surgery, in treating patients, while you were there?

A. Yes, sir.

Q. Did you have occasion to observe his clinical judgment?

A. Yes, sir.

Q. And how frequently was this?

A. Well, it was almost every day for a period of three months.

Q. All right. And speaking as an orthopedic surgeon, what was your opinion as to his clinical judgment?

A. I would say his clinical judgment was excellent.

Q. Did you observe his treatment of patients?

A. Yes, sir.

Q. Did you have occasion to observe him in a patient-doctor relationship?

A. Yes.

Q. And would you describe his relationship with patients, his mannerisms, etcetera?

A. I thought his ability to relate to patients was quite good. He got along quite well with his patients, and I noticed subsequently that he had many of his patients as his friends socially.

(John A. Elstrom, M.D., Transcript, page 7, 8)

And further,

Q. Do you know of any instance during the course of your knowledge of Dr. Schlein at the Mayo Clinic where he would be considered a disruptive force to the hospital or the hospital staff?

A. No, I have personal knowledge of nothing of that sort.

Q. Would you comment on Dr. Schlein's ability to work with other hospital staff personnel? I'm talking other then other orthopedic surgeons, from your own personal knowledge.

A. I think that his ability to get along with his colleagues was quite good. He still has many friends among my particular year of residents, and is well thought of.

Q. My question relates to how did he work with other hospital staff personnel other than orthopedic? I'm talking about nurses, technicians, etcetera, of your own personal knowledge?

A. Yes. I think that Al was well liked and got along as well as anybody with the hospital staff.

Q. He was at no time considered a disruptive force or difficult to get along with?

A. Not to my knowledge.

Q. From yourown personal knowledge do you know whether or not Dr. Schlein had an interest in his patients, in patient care?

A. Yes, I would say his interest in caring for his patients was outstanding.

(John A. Elstrom, M.D., Transcript, page 9, 10)

And further,

Q. Now, you say you have personal knowledge as to one particular instance where Dr. Schlein went back and replaced an elbow at his own expense at the University of Illinois. How did you have this knowledge?

A. It's well known throughout the Department of Orthopedic Surgery of the University of Illinois, and his work on prosthetic elbow replacement is often discussed when difficult problems with the arthritic elbow are presented at orthopedic conferences

Q. Have you been present during these discussions?

A. Yes, sir.

Q. And for what purpose is Dr. Schlein's work brought up?

A. Oh, it's generally discussed an an alternative method of treatment, one of the methods of salvaging a painful elbow and making it movable and painless again.

Q. Why is Dr. Schlein brought up as opposed to, say, another orthopedic surgeon?

A. Well, there is -- elbow replacements are very difficult, and there are, only, oh, two or three elbows, prosthetic elbors, of any reliability being used now.

Q. And is Dr. Schlein's one of these?

A. Yes.

(John A. Elstrom, M.D., Transcript, page 13)

And further,

Q. In that capacity have you ever had occasion over the years to contact Dr. Schlein for any purpose?

A. Yes, I have talked to him on several occasions about joint replacement in the ankle, which is another difficult area of joint replacement in which he has done some original work.

Q. Why would you call Dr. Schlein on this occasion?

A. To ask his opinion and his evaluation of other types of joint replacements, and to ask his opinion on a management of patients with an arthritic ankle.

Q. Would he be considered an expert in this field or area?

A. I would consider him an expert, yes.

Q. Now, when you knew Dr. Schlein at Mayo Clinic what was his reputation as concerning his moral ethics and what not?

A. They were above reproach. There is no question that he is a man of excellent moral character.

Q. Now, dod you know if Dr. Schlein enjoys a national reputation of any nature in the orthopedic community?

A. I believe he does. Many centers throughout the United States are using his prosthesis use for the elbow and the ankle, and I know of friends in the Mayo Clinic who have used his joint replacement and are very pleased with the results that they have gotten with it.

Q. Since Dr. Schlein left his residency at Mayo Clinic and subsequent to his leaving Chicago, have you had occasion to discuss orthopedic problems with him?

A. Yes, sir.

Q. As a result of this are you able to formulate an opinion as to Dr. Schlein's current competency or concern in orthopedic surgery?

A. Yes, sir. I would say that he is quire current in his knowledge of orthopedic methods of treatment, and still a reliable source of information for me in dealing with difficult problems. I see him periodically at the post graduate courses offered by the Adademy of Orthopedic Surgery and have had occasion to talk to him by telephone in special instances.

(John A. Elstrom, M.D., Transcript, pages 14, 15)

100. On July 26, 1975, the Deposition of Dr. Asok Ray was taken. Dr. Ray is an orthopedic surgeon holding a license in orthopedic surgery in the State of Illinois, is certified by the Academy of Orthopedic Surgeons and a Fellow of Royal College of Surgery of Great Britain. He was associated with Dr. Schlein at Weiss Memorial Hospital, Chicago, Illinois from October 1, 1970 to September 30, 1971. Dr. Ray worked frequently with Dr. Schlein on an average of six to seven days a week, and an average of ten to twelve hours a day in orthopedic surgery. He was the principle orthopedic surgeon who assisted Dr. Schlein in surgery during that year, treating various types of orthopedic cases, including difficult and average cases. (See Deposition Dr. Asok Ray, July 26, 1975, pages 3,4,5,6,7,8)

Dr. Ray testified as to Dr. Schlein's clinical competence, judgment, ability to work well with others, patient relationship and reputation, as follows:

Q. Now, going back to your experience with Dr. Schlein, what is your opinion as to Dr. Schlein's clinical judgment?

A. I think he is very competent from the point of view of clinical judgment.

(Dr. Asok Ray, Transcript, page 8)

nd further,

Q. Do you, of your own personal knowledge, know of any patient complaint concerning Dr. Schlein's treatment or behavior with the patient during that year at the Weiss Memorial Hospital?

A. No, sir. I'm not aware of any such complaint.

Q. And you were involved on a day-to-day basis with patients and Dr. Schlein?

A. That is true.

Q. From your personal observations and experience with Dr. Schle how did Dr. Schlein work with other hospital staff members such as nurses, operating room technicians, x-ray technicians, etcetera?

A. I think he worked quite well with them, and I found, you know, he was quite admired by nurses, technicians, and other personnel in the hospital.

Q. Why do you say he was admired?

A. Admired means -- my definition of admiration is: If a patien becomes sick and he comes and seeks to be treated by one particular doctor, I think that means admiration.

Q. Now, you are talking about the hospital staff?

A. I'm talking about all the personnel in the hospital.

Q. The nurses and different people in the hospital, when they became ill, --

A. They came to see Dr. Schlein. That is my observation, and I think, you know, you have to have some admiration to do that.

Q. Do you know of any time while Dr. Schlein was at Weiss Memori Hospital, during your working with him that year, that he would be considered disruptive or had an inability to work with the hospital staff at all?

A. I watched very closely Dr. Schlein for one year, and I did not consider myself or I did not hear of such remarks, and I personally don't think he was a disruptive element.

Q. Would you describe his attitude towards the other hospital staff personnel other than doctors; such as x-ray technicians operating room technicians, and what not?

A. That was very kind, very conscientious, and just like a good doctor. I don't know what, you know, you are looking for, but his attitude, you mean? I think he was very kind to them. He would go out of his way to help them, take care of them. He would come out at all hours of the night, and that I think is important.

(Dr. Asok Ray, Transcript, page 10, 11)

And further,

Q. You have had occasion to observe his post surgery care of patients?

A. I think he gave very competent post surgery care.

Q. What do you base that opinion on?

A. From my close observation and association with him.

Q. What was Dr. Schlein's reputation concerning his morals and ethics?

A. At this time?

Q. No. While you were associated with him.

A. I think I answered that question. It was very good.

Q. He was considered ethical?

A. Absolutely. Ethical.

Q. And his moral standards were --

A. Above reproach.

(Dr. Asok Ray, Transcript, page 12)

And further,

Q. Did he carry out his responsibilities at the hospital while you were there?

A. Absolutely.

Q. Do you know whether there was any criticism, general criticism, now, of colleagues concerning his carrying out of his hospital responsibilities?

A. I cannot give you a specific example.

Q. You don't know of any?

A. I don't know of any.

(Dr. Asok Ray, Transcript, page 13)

And further,

Q. Have you any knowledge of any articles that Dr. Schlein has written?

A. Yes.

Q. And what are those?

A. Personally I have read three articles, one regarding surgical dressings, and two articles regarding hand injuries, finger injuries.

Q. And any others?

A. Yes. I have not read it, but I am aware that he has a publication regarding the prosthetic replacement of elbow joints.

Q. Where have you heard this from?

A. Again, that was quoted very frequently during this discussion of difficult elbow problems.

Q. Do you know whether or not Dr. Schlein has a national reputation as a result of his writings and his work?

A. I think that he has a national reputation that comes from his writings and from his work with the elbow joints, and I believe he has been involved in some ankle replacement.

(Dr. Asok Ray, Transcript, page 14, 15)

And further,

Q. How would you describe Dr. Schlein's behavior with respect to fellow staff members at the hospital at the time?

A. Staff members? The nurses and doctors?

Q. All levels.

A. I think I answered that question. I think it was quite admirable.

Q. He did not have a pattern of disruptive behavior, to you knowledge?

A. No. Absolutely.

(Dr. Asok Ray, Tanscript, page 17)

101. The Plaintiff's application for hospital staff privileges was denied by the Defendant on the basis of a question of whether he had an ability to work well with others as set forth in paragraph 9 in the Affidavit of George Plaskowitz, dated April 14, 1976 and not for the four (4) reasons as stated in the letter of denial dated December 28, 1973. The record before the Defendant Hospital is void of any facts, factual basis or specifics to demonstrate that the same is true. A fair and complete investigation would have revealed and substantiated the testimony of Dr. Schlein before the Credentials Committee, the Ad Hoc Committee and the Appellate Review Committee, which is buttressed by the depositions of Dr. John A. Elstrom and Dr. Asok Ray and the letters submitted by Dr. Schlein from associates at Park City Hospital.

John J. Coughlin

Sworn to and subscribed before me this 2nd day of June, 1976.

William E. Hill
Commissioner of the Superior Court

FILED
DEC 7 11 05 AM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ALLEN SCHLEIN, M.D. :
V. : CIVIL NO. N-74-169
THE MILFORD HOSPITAL :

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant has filed a motion for summary judgment pursuant to Fed. R. Civ. P. 56(c). The case is in an appropriate posture for resolution at this stage. Although plaintiff opposes defendant's motion, he contends that he is also entitled to summary judgment. Moreover, sufficient undisputed facts exist to allow determination of the legal issues presented.

Plaintiff Allen Schlein is a physician and orthopedic surgeon licensed to practice medicine in Connecticut. He maintains offices in Bridgeport and Milford, and has staff privileges at two Bridgeport hospitals. Plaintiff's practice in the Milford area led him to apply for staff privileges at defendant Milford Hospital. After a long series of proceedings, the hospital rejected plaintiff's application. Thereafter he brought this action under 42 U.S.C. § 1983, claiming that the hospital had reached its decision without due process of law and in an arbitrary and capricious manner.

Defendant's motion for summary judgment raises three issues: (1) whether the hospital's activities are state action to which Fourteenth Amendment limitations apply, (2) whether the hospital's denial of staff privileges to plaintiff violated procedural due process standards, and (3) whether the hospital's decision was arbitrary and capricious as a matter of substantive due process.

In an earlier ruling denying defendant's motion to dismiss, 383 F. Supp. 1263 (D. Conn. 1974), the Court discussed the question of whether the Milford Hospital's denial of staff privileges to plaintiff was state action within the meaning of the Fourteenth Amendment. In that ruling, the Court found that the hospital, which is neither owned nor operated by a government subdivision, nevertheless played a pivotal role in the implementation of the state's regulatory authority over both hospitals and physicians. While acknowledging that the precise contours of state action in the context of a "private" hospital's activities are far from clear, the Court concluded that Connecticut's licensing of both hospitals and physicians created a situation in which state-authorized power was being used to determine the scope of state-created rights. Under those circumstances, I was satisfied that sufficient state action existed to apply Fourteenth Amendment limitations to the hospital.

Defendant has asked the Court to reconsider its earlier ruling on the state action question, particularly in light of the Second Circuit's affirmance of Judge Bauman's decision in Barrett v. United Hospital, 376 F. Supp. 791 (S.D.N.Y.), aff'd without opinion, 506 F.2d 1395 (2d Cir.

1974), and the Supreme Court's decision in Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974). While both of those decisions support the view that a very high degree of state involvement is required before state action is deemed to be present, I am not persuaded that they make resolution of the state action issues in this case automatic. It is "only by sifting facts and weighing circumstances [that] the nonobvious involvement of the State in private conduct can be attributed its true significance." Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961). One factor that was not considered in Barrett, or in any other case cited in the parties' briefs, is the significance of a hospital's role in a state system of licensing physicians and hospitals. I held earlier that the Milford Hospital, by virtue of its state license, had been given the authority to determine important aspects of the plaintiff's state license to practice medicine. Thus, state-authorized power was being used to limit a state-created right, and state action was thereby involved in the hospital's denial of staff privileges to plaintiff. Though the issue is not free from doubt, I adhere to that ruling.

Having determined that the Fourteenth Amendment is applicable to the Milford Hospital, at least to some extent, there remains the question of what process is due an applicant for staff privileges. For the purposes of deciding this case, however, it is unnecessary to chart precisely the minimum requirements of due process for physicians applying for staff privileges. It is sufficient to determine whether the process plaintiff received was adequate to safeguard his protected interests.[1]

Before the Milford Hospital finally rejected plaintiff's application for staff privileges, Dr. Schlein received a good deal of process. His application was considered and reconsidered by the hospital's Credentials Committee, Executive Committee, and medical staff. At one point Dr. Schlein requested and received an opportunity, which was not part of the hospital's formal procedures, to appear before the Credentials Committee to refute adverse reports it had received. After the medical staff voted to deny him privileges, Dr. Schlein pursued the right granted him by the hospital's by-laws to a hearing before an _ad hoc_ committee of the medical staff. Prior to the hearing, he received a written statement of the reasons for the staff's decision. And though he was not permitted counsel at the hearing, he was represented by a doctor of his choice. He appealed that committee's decision, again as provided by the by-laws, to the hospital's Executive Committee. The proceedings there were more _de novo_ than appellate in nature, and plaintiff was allowed full legal representation. At both the _ad hoc_ and the Executive Committee meetings, no witnesses were called, but plaintiff was given ample opportunity to comment on the written recommendations the hospital had received and to present letters that he himself had solicited.

Courts have repeatedly held that in comparable hospital staff decisions the full array of procedural due

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process rights is unnecessary. In fact, courts have found no failure of due process in challenged hospital staff decisions that entailed considerably fewer procedural safeguards than those afforded plaintiff in this case. Woodbury v. McKinnon, 447 F.2d 839 (5th Cir. 1971); Don v. Okmulgee Memorial Hospital, 443 F.2d 234 (10th Cir. 1971); Citta v. Delaware Valley Hospital, 313 F. Supp. 301 (E.D. Pa. 1970). Under these circumstances, I am satisfied that Dr. Schlein received sufficient procedural due process to safeguard his interests.

Finally, plaintiff claims that the hospital's decision to deny him staff privileges was arbitrary and capricious, by which he appears to mean that the decision was not based solely on medical competence, and that the evidence of his unsuitability was not substantial. Although the evidence before the various committees was conflicting, there were reports from physicians who knew Dr. Schlein that included reservations about his professional skills, and particularly about his ability to work with others.

While hospitals must have considerable discretion to determine the necessary qualifications of doctors applying for staff privileges, they must be careful to consider applicants only on grounds that are reasonably related to the purpose of providing adequate medical care. Sosa v. Board of Managers of Val Verde Hospital, 437 F.2d 173 (5th Cir. 1971). However, it is entirely consistent with due process for a hospital, in deciding whether to grant staff privileges, to evaluate those personal qualities of a physician that reasonably relate to his ability to function effectively within a hospital environment. A doctor's ability to work well with others, for instance, is a factor that could significantly influence the standard of care his patients received. Due process does not limit the hospital's consideration to technical medical skills.

The Milford Hospital was entitled to consider the negative reports it received concerning Dr. Schlein's ability to work with hospital personnel. Moreover, there was sufficient evidence presented in those reports to support the hospital's decision to reject plaintiff's application for staff privileges. The hospital did not act arbitrarily, capriciously, or unreasonably.

For the foregoing reasons, defendant's motion for summary judgment is granted.

Dated at New Haven, Connecticut, this 7 day of December, 1976.

Jon O. Newman
United States District Judge

FOOTNOTE

1/ Plaintiff contends that he has both a property interest and a liberty interest that were adversely affected by the rejection of his application for staff privileges. It may be that he has neither.

Plaintiff's economic interest in practicing medicine as a staff physician at the Milford Hospital may not rise to the level of a Fourteenth Amendment property interest. The Fourteenth Amendment's procedural protection of property is intended to secure interests that a person has already acquired in specific benefits. Board of Regents v. Roth, 408 U.S. 564 (1971). For a person "[t]o have a property interest in a benefit, he clearly must have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it." Id. at 577. In Roth, the Supreme Court held that the appellee had no property interest in the retention of his teaching position because he had only been hired for a one-year term. Whatever expectancy Dr. Schlein may have had concerning his application for staff privileges, it was less than Roth's expectancy in his reappointment to a position he already held.

Similarly, it is doubtful whether plaintiff has a constitutionally protected liberty interest at stake. Plaintiff contends that the rejection of his application for staff privileges is a "blemish" on his record, "a permanent scar," and an "albatross" that will limit his liberty to pursue his occupation. Without any further demonstration of possible employment opportunities that have been foreclosed to Dr. Schlein since the hospital's rejection of his application, it is impossible to know whether the alleged stigma attaching to the rejection has resulted in a genuine deprivation of liberty.

To decide this case on the basis of whether plaintiff's arguably protected interests are indeed at stake would require a more extensive factual inquiry than has been conducted so far in this litigation. For the purposes of deciding defendant's motion for summary judgment, therefore, I will assume that plaintiff has a Fourteenth Amendment liberty or property interest in obtaining staff privileges at the Milford Hospital.

DEPOSITION OF ROBERT KERIN, M.D.
Chairman, Credentials Committee
Medical Staff of Milford Hospital, Inc.

February 3, 14, 1975

Excerpts - pp. 34 - 36, 38, 39, 47, 50, 51, 53, 54, 64 - 66,
74-77, 103 - 106, 108, 139 - 144, 150, 151,152,
159, 160, 162, 164, 165, 166, 188, 190 - 192

At pages 34 - 36:
Direct Examination by Plaintiff's Counsel:

Q So now you had Dr. Ray and you had Dr. Camarda?

A That is correct.

Q Is it Dr. Camarda's letter that you felt was derogatory to Dr. Schlein with reference to granting him privileges?

A Yes, Dr. Camarda's letter was not considered a favorable one.

Q And what in the letter was it that you considered unfavorable to the applicant?

A May I see the letter?

Q Yes, sure.

A He was termed a detriment to his colleagues, both doctors and nurses.

Q Would you please read to me the language that says he was a detriment to his colleagues?

A "It is felt that he is forceful and energetic toward obtaining his goals, sometimes to the detriment of his colleagues, be they doctors or nurses."

Q Your interpretation of this is that that is derogatory to Dr. Schlein?

A It is not considered a plus.

Q Did you do anything to follow this up, to determine exactly what the detriment was that this gentleman speaks of?

A Dr. Schlein was invited to a Credentials Committee meeting, and a large part of that meeting was consumed by Dr. Schlein explaining his relationship and association with Dr. Camarda.

Q Were you the only one that communicated on behalf of the Credentials Committee with Dr. Camarda?

A As far as I know, yes.

Q Was the letter the only communication before the Credentials Committee as far as Dr. Camarda was concerned?

A Yes.

Q That is the only thing?

A Yes.

Q The Credentials Committee formulated their decision on Dr. Schlein with only a letter from Dr. Camarda in the file, as far as Dr. Camarda is concerned? There was nothing else before the committee from Dr. Camarda other than this letter?

Q Prior to October 5 when the committee denied his application?

A From Camarda?

Q All the committee had from Camarda is this letter, is that correct?

A That is correct.

Q You are sure of that, Doctor?

A It is my recall.

Q Then let me ask the question this way: In their action on October 5 on the application of Dr. Schlein, was there any reliance upon anything with reference to Dr. Camarda other than this letter?

A No, sir.

At pages 38 - 39:

Q Who is Mr. Gavin?

A He is a physical therapist.

Q A physical therapist?

A Yes, who works both in Bridgeport and in Milford. And he drew to our attention that Dr. Lewis acted in a manner that caused lack of harmony in some of the people that he encountered.

Q That who encountered?

A That Dr. Lewis encountered.

Q What has that got to do with Dr. Schlein? Did Mr. Gavin complain about Dr. Schlein?

A No, sir.

Q Did he just complain about Dr. Lewis?

A As I recall.

Q But nevertheless, you felt you had to ask Dr. Camarda about Dr. Schlein's behavior?

A As I explained to you, both applications were received at the same time, and where comments of one ended and the other began sometimes is not completely clear.

--

At Page 47:

.....

Q Now, in addition to that, what do you have? What other standards do you have? Question withdrawn. Did Dr. Schlein meet the qualifications of the hospital in these respects?

MR. ROMAN: Objection to the form of the question. "Qualifications" is stated elsewhere, and the witness has responded with respect to competence.

THE WITNESS: In addition to the standards that I have outlined to you, we rely heavily on the recommendations that are received, the observations that others have made who have worked with him or under whom he has worked.

At Pages 50 and 51:

.....

Q Well now, Doctor, you must follow some standard here to determine whether a man with a license to practice medicine is going to be permitted to practice in your hospital?

Q What is the standard that you used?

Q Please tell me the standards that the Credentials Committee uses to determine the eligibility of an applicant?

A I think I have indicated. The holding of a license --.

Q Now, Dr. Schlein has a license, does he not?

A I believe so. I would have to see the application.

Q Doctor, you don't seriously mean that? You know he has a license, don't you, in the State of Connecticut? You know he has a license, don't you? You investigated this man, didn't you?

A Right.

Q So you don't want to sit here and tell us that your investigation didn't include the fact as to whether he is licensed in the State of Connecticut?.

THE WITNESS: All I said was that I would like to see the application.

Q I will be happy to show you the application.

A Yes, he is licensed.

Q So he does have a license. Is there anything wrong with his license?

A No, sir.

At Pages 53 and 54:

THE WITNESS: You have to be able to get along with people. You have to be able to work with them.

Q Who determines that?

A Our bylaws.

Q Well, is this an objective standard, getting along with people? Getting along with them in what respect?

MR. RONAI: Objection to the form of that question, with respect to the term "objective".

THE WITNESS: I think the bylaws are clear, stating that the ability to work well with others is one of the standards we look for.

Q So you have a standard that people must be able to work well with others, is that correct?

A I would like to see the bylaws, to be able to quote it.

(The witness received a copy of the bylaws.)

THE WITNESS: Will you help me here?

MR. RONAI: No. Just let the record show that a copy of the Milford Hospital Medical Staff Bylaws was presented to the witness.

THE WITNESS: Article III, Section 2, Subsection (1):

"Only physicians and dentists licensed to practice in the State of Connecticut who can document their background, experience, training, and demonstrated competence, their adherence to the ethics of their profession, their good reputation and their ability to work with others with sufficient adequacy to assure the medical staff and the governing body that any patient treated by them in the hospital can be given a high quality of medical care shall be qualified for membership on the medical staff."

Q How does your medical staff determine whether someone can work with others?

A In new applicants, the letters of reference.

At Pages 64 - 66:

.....

Q Now, Doctor, referring to the Credentials Committee minutes of October 3 -- do you have those there? If not, I will hand you my copy. Do you have that there, Doctor?

A Yes, sir, I do.

Q Now, these minutes were prepared by you, I take it?

A Yes, sir.

Q And do these represent the official minutes of the Credentials Committee for a meeting on October 3, 1973?

A They do.

Q Now, what information was given to you for you to write the following: 'Essentially two conclusions were reached: (1) One of the most important functions of the Credentials Committee is to insure that this community not be exposed to behavior of questionable caliber." Does this have reference to Dr. Schlein?

A Yes, sir, it does.

Q And please tell us what questionable behavior you are talking about, behavior of questionable character. What information was supplied to you at this meeting for you to draw this conclusion?

A Well, the comments of Dr. Coventry were one.

Q All right, please tell us what they were.

A That he was difficult to work with, he did not work well with patients. (emphasis supplied)

Q And where is this contained, in a letter by Dr. Coventry?

A This is the phone call.

Q To you?

A Dr. Van derWerker.

Q The telephone call to Dr. Van derWerker. All right, go ahead.

A May I see the letter --.

Q I'm sorry, I thought you had it.

A I do have that. May I see the letter that was written to Mr. Plaskowitz from --.

Q By Dr. Coventry?

A Yes.

Q This is a letter dated October 10, 1973. That could have nothing to do with your meeting of October 3rd, could it?

A No, sir.

Q What else?

A In his comments to me on September 11, he describes his behavior as erratic, not having both feet on the ground, difficulty making decisions.

Q Is all this recounted somewhere in the minutes?

A My phone call -- strike that, please -- my phone conversation with him is a part of the Credentials Committee minutes.

Q You relied upon the statement, as well as what? Anything other than the statement contained in the telephone call of September 11, and what he said to Dr. Van derWerker? Is that his name?

A Yes. These were two --.

Q Both telephone calls?

A Correct.

Q And related either by you or Dr. Van derWerker to the committee?

A Correct.

Q Dr. Coventry never appeared before the committee?

A No, sir.

At Pages 74 - 77:

..... Q But isn't it true that Dr. Coventry, after relating this, also said he could be recommended for the staff?

A He did.

Q And he said this on more than one occasion, did he not?

A Yes, he did.

Q And isn't it your usual practice to accept a recommendation of the people where a man trains?

MR. RONAI: Objection to the form of the question. There is no evidence that there is a usual practice applicable to all cases.

Q Is it your usual practice?

A I think our usual practice is to consider the contents and draw our own conclusions. That is what the Credentials

Committee is charged to do.

.....

Q Can you tell us, do you know if it was the conclusion that the difference between Dr. Camarda and Dr. Schlein was a personal situation?

MR. RONAI: As opposed to competence, is that your question?

MR. BENNETT: As opposed to the recommendation, the reliance of the committee on the recommendation.

THE WITNESS: The question that emerged before the committee was, did Dr. Camarda wrong Dr. Schlein?

Q And what was the conclusion of the committee?

A If I may quote: "After discussing the matter, the committee felt that Camarda's letter could not be relied upon and the committee then instructed its chairman to contact the two chiefs at Bridgeport," as I have outlined to you, and also to contact the Strauss Clinic where Dr. Schlein had been employed in Chicago.

At Page 77:

..... Q You haven't answered my question, Doctor. My question was, did your committee ever determine what the detrimental conduct referred to in Camarda's letter was?

A Specifically, no. It seemed to fall into a pattern that emerged.

At Page 103:

.....

Q All right. And as a result of the letter of Dr. Camarda, I believe you told us the last time, you decided to take away his provisional privileges?

A As I recall, I indicated that it was this letter, along with the comments of Dr. Coventry, that influenced the decision.

Q And were these comments of Dr. Coventry the ones made to Dr. VanDerwerker or were they made to you?

A Both.

Q What comments did he make to you?

A These were, as I related to you on February 3rd, Dr. Coventry described Dr. Schlein as being erratic, not having both feet on the ground, having difficulty making decisions.

At Page 104 - 106:

.....

Q Now, Doctor, on October 10th, Dr. Coventry did recommend Dr. Schlein for appointment to the staff of the Milford Hospital, did he not?

A Is that the date of Dr. Coventry's letter?

Q Yes.

A He wrote a letter to Mr. Plaskowitz.

Q Yes, and in it did he recommend him to the staff?

A May I see it?

Q Oh, surely. (Document handed to witness.)

A May I answer?

Q Yes.

A As I indicated in the February 3rd session, the final paragraph of Dr. Coventry was that he could recommend Dr. Schlein for the staff in a conclusion that I found a bit strained in view of the content of his letter.

Q I was just about to ask you, Doctor, if he -- question withdrawn. Prior to October 10th, and prior to your telephone call of some time in September, was it, that you made a call to Dr. Coventry -- I think the record indicates you made a call on September 11th.

A As I said repeatedly before, Dr. Coventry called me.

Q Well then, let me say the telephone call. Do you know whether prior to that time, Dr. Coventry had recommended Dr. Schlein for appointment to the Milford Hospital?

A Again, we have found, we have established that Dr. VanDerwerker indicates that he called Dr. Coventry on July 30, 1973, concluding again with the statement that he could recommend him for appointment, but again the content of the preceding paragraphs were not consistent with this conclusion.

Q This was your interpretation, is that correct --

you, Doctor Kerin, that was your interpretation?

A That would be my interpretation.

Q Now, there isn't any question in your mind, is there, Doctor, that Dr. Coventry did recommend Dr. Schlein for appointment to the staff?

A There is no question.

At Page 108:

Q Did you conduct, as chairman of the Credentials Committee, any investigation into patient-clients of this man in any hospital where he was affiliated?

A No.

At Pages 139 - 144

Q All right. Now, let's take the Chief of Staff of the Bridgeport Hospital. That was, I believe you told us near the end of the deposition on the 3rd, was Dr. McCreery?

A He is Chief of Orthopedics.

Q Is he the gentleman you contacted?

A Yes.

Q And did he respond?

A Yes.

Q And was his response evaluated by the Credentials Committee?

A Yes.

Q And what was its evaluation of that response?

A May I see his letter?

Q I'm showing you a letter dated December 3, '73, Doctor.

A The committee's feeling was that it didn't say much.

Q Well, was the ultimate recommendation to deny Dr. Schlein's application by the Credentials Committee based in any way on this letter?

A I don't know how much importance the committee attached to this letter.

Q You are the chairman, aren't you?

MR. RONAI: Objection.

A Yes.

Q Did it play any part in the denial of a recommendation by your committee or Dr. Schlein?

A It played this part: that at no time within the Bridgeport community was the Credentials Committee able to get one letter of positive response in support of Dr. Schlein.

Q Within which community?

A The Bridgeport community.

Q From whom, other than Dr. McCreery and Dr. Shanley, did they seek such letters?

MR. RONAI: Objection. The record speaks for itself -- oh, I withdraw that.

A I've already indicated the minutes of December 6th, 1973 revealed that Dr. Lipkoff reported that he requested a letter from Dr. Glass practicing at Park City. Dr. Glass declined to comply with the request.

Q All right. Now, did you seek anybody else?

A No, sir.

Q Do you know a Dr. Kamens in Bridgeport?

A I know who he is.

Q And who is Dr. Kamens?

A He is Chief of Surgery at Park City.

Q Is Park City where Dr. Schlein was affiliated?

A Yes.

Q Did you or any member of your committee attempt to get a letter from Dr. Kamens?

A No.

Q Is there any particular reason why you would not?

A Yes.

Q Would you please state why?

A He's not an orthopedic surgeon.

Q In your application were you concerned only with orthopedic surgeons?

A Our custom is to seek the opinion of peers in the same specialty.

Q Now, by a "peer", then you mean only someone who was in the field of orthopedics, is that the definition you place on peers?

A A peer is generally considered to be one with the same specialty.

Q This is the way the Credentials Committee uses the word "peer"? Because obviously, Doctor, it is not the common use of the word "peer."

A Let's say peers in orthopedics.

. . . . .

Q Okay. So other than in your investigation, did the committee agree to this, that you would only investigate Dr. Schlein through his peers in orthopedics?

A As I've indicated, this is our general custom.

Q Now, Mr. Gavin is not a peer of his in orthopedics, is he?

A No.

Q But you did have Mr. Gavin attending the meeting of the Credentials Committee?

A Yes.

At page 150:

.....

Q Dr. Barney, who was a member of the Ad Hoc Committee, at the hearing of the Ad Hoc Committee, on Page 88 of the transcript of that hearing, says, "The most damaging thing comes from Doctor Walter Shanley. Would you care to enlarge on that?" This he said to Dr. Schlein. Now, did you at any time ever tell Dr. Barney that Dr. Shanley had retracted this damaging letter?

A As I've indicated to you, as I recall it, I told members of the Credentials and Ad Hoc Committees about the letter of retraction.

At page 151-153:

.....

Q -- and I'll ask you to look at it before I ask you the next question. I direct your attention to the remarks of Mr. Plaskowitz with reference to this letter of February 8th from Dr. Shanley.

MR. RONAI: Before the witness answers, I'd like to --.

MR. BENNETT: You want to look at it?

MR. RONAI: Please.

MR. BENNETT: I thought you had a copy.

MR. RONAI: I supplied counsel with my copy.

(Document handed to Mr. Ronai.)

Q All right. Now, have you read that, Doctor?

A On Page 20?

Q Yes. Have you read Mr. Plaskowitz' statement that the letter Dr. Shanley sent to you on February 8th was not received by him until February 26th?

A Yes.

Q And I'll ask you then: What did you do with the letter in the meantime?

A I told you my recollection was to bring it up to his office.

Q Why did you wait that long? Why did you wait until the day before the hearing to bring it up there?

A As I recall, I didn't.

Q Mr. Plaskowitz is in error as to when you brought it up?

A He made a statement that he didn't receive it.

Q Are you saying you left it there but he didn't receive it?

A I'm only saying I brought it to the administrator's office.

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Q And to whom did you give it?

A I don't recall.

Q How many people work in that office?

A Three.

Q You had given it to one of three people?

A That would be my recollection.

Q Did you consider this an important letter, Doctor?

A Yes.

Q Did you consider this information that should be given to the concerned members of the committee?

A Yes.

Q Did you supply them with copies?

A No.

At Page 159:

.....

Q What did you ask Dr. McCreery?

A I told him that I had been instructed to call him and request a positive letter on behalf of Dr. Schlein.

Q Was that it, was that the extent of the conversation?

A As I recall it.

Q And with Dr. Shanley?

A Essentially the same.

At Page 161, 162:

. . . . .

A I'm looking at the minutes of the April 15th Medical Staff meeting.

Q All right. And you're doing this in reference to my previous question to you concerning whether or not the retraction of Dr. Shanley's letter had any effect on this deliberation?

A Yes.

Q Very good.

A Now, the minutes are a part of the record as they stand. These are they (indicating).

MR. BENNETT: If Mr. Ronai represents they are in court, I'll accept that. I don't think we have a copy.

MR. RONAI: I'll supply you with a copy. You can make it now if you want.

A (Continuing) At that meeting for purposes of the vote, as I recall, it was felt that Dr.Shanley's letter would have to be deleted, that he had written two letters: one being disinclined to endorse Schlein, and another endorsing him. So it was felt that Shanley's remarks should be excluded. And what was left was the letter of Dr. Camarda, the two phone calls and letter from Dr. Coventry, Dr. Siegel's letter of December 3rd, and Dr. Bernard's letter of a subsequent date.

Q Now then, Doctor, the decision, the ultimate decision to exclude Dr. Schlein from privileges was based on these matters that you just related to us?

A As I recall, this was where the discussion was germinated.

Q Were you present during these deliberations?

A I was present.

Q And it is your recollection that these were the items that were discussed and upon which the decision to exclude Dr. Schlein is predicated?

A That's my observation.

Q Is there anything else?

A No, sir. And I'm not speaking for the staff.

AFTERNOON SESSION:

Direct Examination Continued:

By Mr. Bennett
At Pages 164, 165 and 166:

Q Doctor, you stated that the Siegel letter of December 3rd was one of the documents that played some weight in the ultimate denial of Dr. Schlein's application. Do you know, or was the information available to the committee, of any specific complaint by any patient, doctor, nurse or hospital employee in the Strauss Group about Dr. Schlein?

A To what committee?

Q To either your committee or the information that was before the Board of Directors, the Medical Board, when they made the ultimate decision.

A You mean of April 15th?

Q Yes.

A No specifics or examples were available.

Q In the case of Dr. Siegel, as well as Dr. Camarda?

A Yes.

Q Do you know if Dr. Schlein and Dr. Siegel were practicing in the Weiss Hospital out in Chicago?

A The Ad Hoc transcript describes the type of relationship.

Q And whether or not the record contains a letter from the Executive Director of the Weiss Hospital with reference to Dr. Schlein's application?

A The question, please?

Q Does the record contain a letter from the director of that hospital to you? I show you a letter of November 14th.

A Yes.

Q You solicited this letter from Dr. Weiss, did you?

A Not by name.

Q But did you write to the hospital out there for some information on Dr. Schlein?

A Yes.

Q And this is the response?

A Yes.

Q This letter of November 14th?

A Yes. May I read it?

Q Oh, I'm sorry. Go ahead. Was this letter considered in the deliberations of the Credentials Committee at all, Doctor?

A It was read before the Credentials Committee.

Q Whether or not it was given any weight?

A It's my recollection that it was more a point of information than anything else.

Q And as a point of information, it was given no weight by the committee other than as informative?

A Again, I can't speak for the committee. That's my impression.

At Page 188:
Cross Examination by Mr. Ronai:
. . . . .

Q When, do you recall, was such an application filed by Dr. Sterling for privileges at Milford Hospital?

A May-June of 1974.

Q What is Dr. Sterling's specialty?

A He is an orthopedic surgeon.

Q Were such privileges granted for Dr. Sterling?

A He was given provisional privileges in orthopedic surgery.

Q With whom did Dr. Sterling practice upon his being granted provisional privileges at the Milford Hospital?

MR. BENNETT: Objected to.

Q You can answer.

A He practiced with Dr. Lewis and Schlein.

Q And that is the same Dr. Allen Schlein who is the plaintiff in this case?

A Yes.

Q What part did you play with respect to the action taken on the application of Dr. Anthony Sterling for privileges at the Milford Hospital?

MR. BENNETT: Objection.

A As chairman of the Credentials Committee, his application was processed in the usual manner.

At pages 190 - 192:

.....

Q -- prior to his making application for staff privileges at the Milford Hospital?

A As I recall, he had not been in practice.

Q Had the Montefiore and his staff residency been the source of his clinical orthopedic experience prior to his application to the Milford Hospital?

A His experience may not have been limited to the Montefiore. That was his place of residency at the time.

Q Where else had he obtained his experience, if you recall?

A I don't recall.

Q Were the letters from those persons that he gave as sponsors, favorable letters?

A Yes.

Q Was there any negative statement, pejorative statement, or less than favorable commentary in any of those letters received with respect to the application of Dr. Sterling by you or your Credentials Committee?

A I recall none.

Q How many times was Dr. Sterling's application considered by the Medical Staff of the Milford Hospital?

A Once.

Q Do you know if Dr. Sterling is still practicing with Dr. Schlein and Dr. Lewis?

A I know that he is not.

Q Does he still have staff privileges at the Milford Hospital?

A Yes.

REDIRECT EXAMINATION

BY MR. BENNETT:

Q Doctor, in examining and acting upon this application of Dr. Sterling, by what standards was Dr. Sterling judged?

A The same standards that I've outlined previously. His application was reviewed. The requirement for Connecticut license was ascertained. The place and length of his training was noted, and letters of recommendation were sought from those whom he listed on his application.

Q And what in your Bylaws is there to tell someone what standard they have to live up to or meet?

A Article III, Section 2, Subsection 1.

Q Section 1, did you say?

A Section 2, Subsection 1.

Q Now, did you apply the same consideration to his application that you did to Dr. Schlein's?

MR. RONAI: Objection. The witness said he just did.

Q You did? Did you give him the same treatment that you gave Dr. Schlein?

MR. RONAI: Objection. The witness answered that.

A Yes.

Q Did you give any consideration to the fact that since he was associated with Dr. Lewis, his application might require further investigation?

MR. RONAI: Objection. There is no evidence that there was that consideration paid by the Credentials Committee, the staff and the Executive Committee of the Board with respect to Dr. Schlein as a result of Dr. Lewis. So that having not made that with respect to Schlein, there would be no basis for making that with respect to Dr. Sterling.

DEPOSITION OF MICHAEL J. GAVIN

February 15, 1975

Excerpts - pp. 15, 16, 17, 18, 22, 23, 25, 26, 56, 57

Direct Examination by Plaintiff's Counsel, John J. Coughlin
At pages 15 - 18:

.....

Q All right. Now, what I'm trying to get at is -- and I believe I asked you the question -- wasn't it unusual or was it, or did you consider it unusual for Dr. Kerin to approach you concerning information about a doctor, an orthpedist, in Bridgeport, and you said, "No." Would you answer audibly?

A Yes.

Q Now, what I am seeking is how did Dr. Kerin know that you did work for Dr. Lewis privately or at Park City Hospital?

THE WITNESS: I don't know if he knew that we did any work for Dr. Lewis privately. He did know that the partnership covered both hospitals, and that -- that's it.

BY MR. COUGHLIN:

Q Had Dr. Kerin ever in the past ever approached you concerning information concerning an orthopedist applying for privileges at Milford Hospital?

A No.

Q Do you know of any other orthopedist who applied for privileges in the past three years at Milford Hospital prior to June of 1973?

A I'm just trying to think this one out.

Q If you know?

A I can't say for sure, no. I take that back. There was a gentleman from Derby who I remember in the past had applied.

Q Do you know his name?

A I think his name was -- and I stand to be corrected -- Gagliardi, and the reason why I remember that is that he had called my office wanting to know if I had any extra office space. That's the reason why it stuck in my mind. That was all.

Q Did Dr. Kerin approach you concerning Dr. Gagliardi?

A No.

Q I believe you referred to a meeting you attended at Milford Hospital?

A Yes.

Q When was that?

A That was June 22, 1973.

Q All right. How did you happen to attend this meeting?

A I was invited by Dr. Kerin.

Q In what form was the invitation; telephone, in person or letter?

A In person.

Q Where was this?

A Somewhere in Milford Hospital.

Q Do you know the approximate date?

A I'd say it must have been about a week or so prior to the June 22 meeting.

Q Now, in your first conversation with Dr. Kerin, he asked you basically if you knew Dr. Lewis, is that correct?

A Yes.

Q All right. What, if anything, did you say to him at that time?

A I said that I was acquainted with Dr. Lewis, and -- that I was acquainted with Dr. Lewis.

Q All right. Did you say anything else at that time?

A I'm just trying to think. He asked me how did I get along, I guess, with him, and I can't remember the exact words, John, but that was the nature of the conversation, and I told him that I had some problems with Dr. Lewis.

At Pages 22 - 23:

..... Q You never discussed Sports Medicine, Inc., with Dr. Kerin?

A No.

Q And you never discussed it with the Credentials Committee on June 22, 1973?

A No.

Q Who was present at the Credential Committee meeting, to the best of your recollection, on June 22, 1973?

A There was three doctors, I think. Drs. Kerin, DeNegri and Coassin.

Q Do you know who was chairman of the meeting?

A I think Dr. Kerin was.

At Page 25-26:

.....

Q If Dr. Kerin sought information concerning Dr. Lewis because of your knowledge of working with him at Park City Hospital, you would have the same knowledge about Dr. Schlein, because Dr. Schlein also practices orthopedics there?

MR. PARESE: Wait a minute. That's a two-part question. What is the qualifying "if" at the beginning?

Are you asking him if he has knowledge, or are you asking if Dr. Kerin knew of his knowledge?

MR. COUGHLIN: All right. I'll withdraw

that question for now.

BY MR. COUGHLIN:

Q I believe you testified you got along well with Dr. Schlein at Park City Hospital?

A Yes.

Q He practices orthopedics the same as Dr. Lewis does at Park City?

A Yes.

Q This information was never sought by the Credentials Committee at the meeting of June 22, from you?

A No. Just with the one question by Dr. Coassin.

At Pages 56 & 57:

.....

BY MR. COUGHLIN:

Q You said you treated patients of Dr. Schlein's at Park City Hospital?

A Yes.

Q You got along well with Dr. Schlein?

A Yes.

Q Do you know if he got along generally well with the staff at Park City Hospital?

A I heard no complaints.

Q Did he express a concern for his patients?

A Yes. We had a very good rapport.

Q Do you consider him a good orthopedic doctor, who is concerned about the welfare of his patients?

A Whenever I was with him, he was.

Q Nobody ever requested this information from you from Milford Hospital; I mean the Credentials Committee, Dr. Kerin?

A No.

Q And you never volunteered it?

A No.

Q Am I correct that your testimony at the Credentials Committee was limited strictly to Dr. Lewis?

A Yes.

Q Did you make this very clear at that meeting?

A Yes, because as I stated before, Dr. Coassin was the only one who mentioned Dr. Schlein, and that was in closing.

Q Did you make it very clear prior to the meeting, when you talked to Dr. Kerin, that you were only discussing Dr. Lewis and not Dr. Schlein?

A Yes, because Dr. Lewis was the only one that I had a problem with.

Q You never suggested or requested that the Credentials Committee seek further information concerning Dr. Schlein from any other person?

A No.

Q You had no reason to?

A None.

Q Asking the same question, did you ever suggest in your conversations with Dr. Kerin, that he investigate or check with other people, such as the Chiefs of Orthopedics in Bridgeport or the Ethics Committee or any other person, concerning Dr. Schlein?

A No, because I had no problems with Dr. Schlein.

DEPOSITION OF PETER T. NAIMAN, M.D.

February 24, 1975

Excerpts - pp. 3, 4, 5,12, 42, 43, 51, 52, 59, 60, 62 - 64,
75, 76, 98, 99, 120, 158 - 160

At page 3
Direct Examination by John J. Coughlin, Esquire:

Q Will you state your full name and address, Doctor?

A Peter T. Naiman, 112 Broad Street, Milford, Connecticut.

Q And you are an orthopedic surgeon?

A Yes.

Q Where do you conduct your practice?

A Milford, Connecticut, at the address just given, and Milford Hospital.

Q And are you in association with anyone?

A Yes, Dr. Robert Kerin and Dr. Carl Lundberg.

Q And you say you practice in Milford Hospital?

A Yes.

At pages 4 and 5:

Q Do you know at that time, referring to June of 1973, of any other orthopedic surgeons who had full privileges at Milford Hospital?

A No.

Q Now, prior to 1973, June, were there any other orthopedic surgeons who had offices in the City of Milford, do you know?

A No.

Q And at that time, June of 1973, how many orthopedic surgeons had full privileges at Milford Hospital?

A Three, myself, Dr. Kerin and Dr. Van derWerker, who was not -- Dr. Van derWerker not being active at the time.

Q Was Dr. Van derWerker associated in professional practice with any other doctor?

A No.

Q Any other orthopedist?

A No.

Q Had he been associated before that time --.

A He had previously been associated with Dr. Kerin.

At page 12:

.....

Q Did any member of the Credentials Committee on June 22, 1973 request any opinion or information concerning Dr. Schlein at all?

A No.

At page 42:

Q Now, I showed you the minutes of the Credentials Committee meeting where they discounted Dr. Camarda's letter so they could not rely upon it. Did you follow that recommendation, personally?

A Yes, I accepted that.

Q So Dr. Camarda's letter would not be considered valid --.

A Well, it would be considered a letter of conflict. Dr. Camarda felt one thing. Dr. Schlein felt one thing. The Credentials Committee in their investigation felt that you had to weigh that in terms of the conflict and that you had to not rely on it.

Q And if the Credentials Committee didn't rely on it, did you personally rely on it?

A Heavily? No.

At page 51:

Q And while with the Strauss Medical Group, he held privileges at Weiss Hospital?

A I believe that's correct.

Q Did you not feel it unusual or odd that Weiss

Continuing on page 52:

Hospital, where he in fact conducted this surgery and had his patient relationships and exercised his clinical skills, wrote a positive letter of recommendation saying he had high standards?

A No, because again one has to evaluate the sources in which one is receiving the material. And in truth, those qualified to judge the performance of an orthopedic surgeon are those closest to his work, those with whom he is practicing, his peers in the community and the people under whom he trained.

And again you had a letter from Dr. Siegel with whom he practiced, which is as close as one can get; and a letter from an administrator, who may not be totally cognizant of all aspects of any physician's performance.

Q All right. Now, we go to Dr. Ray's letter which was during the same time period. And Dr. Ray, I believe you said, was an orthopedic surgeon of national reputation.

A Yes.

Q And he wrote a very strong letter of recommendation.

Q He wrote a letter of recommendation -- I'll withdraw that question -- he wrote a letter of recommendation.

A Yes.

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At page 59 - 60:

Q All right. What was the basis of your decision?

A As you read this, the characteristics that one reads, "Only physicians and dentists licensed to practice in the State of Connecticut" --.

Q All right, can we stop there? Did Dr. Schlein possess an application to practice in the State of Connecticut?

A Yes.

Q Any other states, to your knowledge?

A I don't know. I'm sure he must have in other states. I just don't know.

Q What does a license mean to practice orthopedic surgery in the State of Connecticut?

A We are not licensed to practice orthopedic surgery. We are only licensed to practice medicine.

Q Does it mean that a doctor is competent?

A It means that you're licensed to practice medicine in the State of Connecticut. Does it attest to competency?

Q Yes.

A I would think that the record answers that question. It's not a one hundred percent attestation of competency. It's the results of an investigation based upon graduation from medical school and passing of certain examinations up to that point. It makes no statement as to current level of competency.

Q But it would indicate competency, would you agree?

A In my mind?

Q Yes.

A No.

Q It does not?

A No.

Are you saying there are physicians in the State of Connecticut holding licenses that are not competent?

A It's possible.

Q Do you think this was the case with Dr. Schlein?

A I have no idea.

Q You personally never felt that he was incompetent?

A No.

At page 62:

.....

Q What factual background was there --.

A The same factual background that exists in any letters that come from sources which are familiar with the person about whom they're writing.

Dr. Camarda's letter as found by the Credentials Committee could not be relied upon, correct?

A Yes.

Q And Dr. [illegible] wrote he had a good reputation. This letter was borne out by the administrator of the Weiss Memorial Hospital, that he had a good reputation.

A You're not talking about my evaluation of these letters, correct?

Q Right.

A Okay.

At page 63:

.....

Q Were there any distinct facts that were presented to the medical staff on December 7th which would support any of the opinions --.

A The facts were the letters. The facts were only as appeared in each specific letter that was read.

Q Did any member of the medical staff, that you know, make an investigation ~~x~~ to the actual circumstances surrounding these opinions?

A At the time of this meeting?

Q Yes.

A No. Each letter -- again I can only speak for myself -- each letter was evaluated as to its source and as to its content, and each letter is only an opinion, and no letter with specific facts really given, positive or negative.

At pages 75 and 76:

.....

Q All right. Paragraph 3 of the letter of 12/28/73 from [illegible] indicates another reason for denial was your inability to obtain an affirmative recommendation with respect to your professional competence from the Chiefs of Orthopaedic Surgery at two local hospitals, together with the pattern of abrasive behavior with respect to fellow staff members at other hospitals, as well as other facts developed in the record, raised substantial doubts that you possessed the demonstrated competence, good reputation and ability to work well with others so as to ensure a high quality of care to patients at Milford Hospital."

Would you like to read it?

A No, I'm familiar with that.

Q Again, Dr. Camarda's letter was not relied upon by the Credentials Committee and was so reported to the medical staff on December 7th?

A Yes.

Q Okay. So now there again we come down to Dr. Shanley's letter as it relates to Chief of Orthopedics at two local hospitals.

A Dr. Coventry's letter, Dr. Siegel's letter.

At page 98 and 99:

.....

Q Okay. My question is just simply: No witnesses were presented by the medical staff representative to support the adverse recommendation on Dr. Schlein's application?

A The only witnesses that -- the material presented was letters.

Q No witnesses, though?

A No physical presence of an outside witness, no.

At page 120:

.....

Q Do you feel that Dr. Schlein could effectively represent himself or rebut these letters if he had no knowledge of their content prior to the hearing?

A It is my impression that he knew what was in the letters --.

Q My question is: If he did not have knowledge of these letters --.

A Then he would have to think more quickly than if he had knowledge.

At page 158 - 160:

.....

Q The general import of these letters was that he was able to work well with patients and with other members of the medical staff?

A Again I'd have to specifically go back to each letter to review it. As I remember, there were letters from sources at Park City Hospital which were favorable and did say that he did certain things well. But these are in. We have discussed these at length.

Q I will ask you to look at these letters.

A The letter from Dr. Hope-Ross and Dr. Wiggins do not so state what you said. The letter from Dr. Zimmerman, who is the internist who wrote, is certainly a positive letter. It does not make a specific statement about your last statement. And the letter from Dr. Hoffman praises his interreaction to the patients that he and Dr. Hoffman took care of together -- again a positive letter of recommendation. No question about it.

Q Did the import of all the letters -- and you've been talking about the import of the letters that you received-- in its totality indicate that Dr. Schlein could perform his functions -- or performed his functions well at Park City Hospital so far as his interrelations with patients and other staff members?

A The totality of all letters received?

Q No, of those letters received from Park City.

A There were other letters from Park City Hospital. Dr. Camarda's letter, which is again from the Acting Chairman of Orthopedics, states differently from these letters. Again you have to balance off the letters. Obviously there is a difference of opinion.

Q Five doctors say he works well --.

A Obviously the balance of letters from Park City Hospital -- Dr. Camarda's being an orthopedist, has weight. There are other letters from orthopedists which state that he has positive attributes. I certainly don't wish to argue that.

Q Was any evidence presented to the Ad Hoc Committee by a Medical Staff representative of any specific instance of Dr. Schlein not properly or not working well with patients?

A Again the evidence presented was totally in those letters, and I'd have to read every single letter. But to my knowledge what was in those letters is what was presented.

What is in the minutes is what was presented. I do not recollect a single instance of one patient, but it's in the letters.

Q Was there any specific instance of difficulty in getting along with another doctor presented?

A Yes.

Q What?

A Any specific instance or just general instances?

Q No, specific.

A Specific, one instance. Only repeated questions raised by various orthopedic surgeons: Dr. Siegel, Dr.Camarda.

Q All right. What specific instances were raised --.

A General statements were made. We're not referring to specific instances.

DEPOSITION OF WALTER T. SHANLEY, M.D.

May 5, 1975

Excerpts - pp. 4,5,6,7,8,9,10,56, 57, 63, 71, 72

At Pages 4 - 8:
Direct Examination by Plaintiff's Counsel, John J. Coughlin:

.....

Q At any time did you become aware in 1973 that Dr. Allen Schlein was applying for staff privileges at Milford Hospital?

A Yes.

Q When was that?

A That was approximately in November when Dr. Robert Kerin, whose position I think was as chairman of the Credentials Committee, called me on the phone in regard to Dr. Allen Schlein's applying for privileges at Milford Hospital.

Q Was this the first time you had any knowledge of Dr. Allen Schlein's applying for staff privileges at Milford Hospital?

A Yes.

Q This was a telephone conversation?

A Yes, it was.

Q And this was personally with Dr. Kerin?

A Yes.

Q And what did Dr. Kerin say when he called you?

A Dr. Kerin called me and he told me the situation that had developed out in Milford Hospital --.

Q Exactly what do you mean by "situation that had developed"?

A Well, apparently Dr. Schlein had applied for privileges prior to this telephone conversation with me, and there was a question as to his credentials.

Q Did Dr. Kerin say exactly what the problem was with his credentials?

A I can't remember exactly. Yes, there was some question, otherwise he wouldn't be calling me. And he also stated he was calling other physicians in the Bridgeport area to check on Dr. Schlein -- his credentials, that is.

And he asked me, after giving me sort of a brief description of the situation that had developed up to that point, whether I would recommend him to the staff of Milford Hospital or not, and what I thought of him.

Q Did he say what had developed up to that time in the Milford Hospital?

A Well, he gave me a little background on Dr. William Lewis, his associate, who had applied over at Milford Hospital previously and apparently had gotten some temporary privileges there, which were revoked. And now he told me how Dr. Schlein, his associate, was trying to get privileges.

He did tell me that they had opened an office up in Milford, and he did tell me that there was some dissatisfaction with the staff and himself concerning these two doctors, and they were concerned about exactly what they wanted from Milford Hospital and what they intended to do there. And he asked me if I would recommend him to their staff. (emphasis supplied)

Q Did he say exactly what the dissatisfaction was with the staff at Milford Hospital and himself?

A Well, he did state that there was no question there was dissatisfaction with the very short appearance that Dr. Lewis had made on the scene in Milford. They were not satisfied with him at all. They asked him to leave the hospital. He didn't give me the details. They took away his temporary privileges.

Now, Dr. Schlein is an associate of Dr. Lewis. They are within the same professional corporation. Dr. Schlein essentially represents Dr. Lewis' corporation and his own, as one corporation, Bridgeport -- no, it's Orthopedic Associates, P.C., and I think he was concerned that one would represent the other. And as he put it, "We're dissatisfied with Dr. Lewis. I think Dr. Lewis is trying to sneak in the back door of Milford Hospital by putting up Dr. Schlein." (emphasis supplied)

Then he asked me what I thought of Dr. Schlein.

Q And what did you say?

A And he asked me if I would recommend him, or Dr. Schlein, to the staff of Milford Hospital.

Q Did he -- when I say "he," I'm referring to Dr. Kerin -- did he state when Dr. Lewis' temporary privileges or privileges had been revoked?

A He didn't say exactly when. I took for granted it would have been in the short period of time prior to his conversation with me.

At Pages 8 - 10:

.....

Q I gather it would be around July 1972. Have you ever met Dr. Schlein?

A Once.

Q When was that?

A It was at an orthopedic meeting here in Bridgeport.

Q Did you have a conversation with him?

A Very briefly. I think essentially it was an introduction, a few words, a handshake, and that was it.

Q Have you ever observed any of Dr. Schlein's treatment of patients?

A Never, firsthand. Firsthand, no.

Q Prior to November 29, 1973, what professional conduct -- pardon me -- contact did you have with Dr. Schlein?

A Firsthand contact?

Q Yes.

A Only the first time that I described that I met him. No contact with him personally.

Q What personal observations had you made as to Dr. Schlein's professional performance in Bridgeport?

A As far as watching him perform any of his professional activities, I never observed him.

At Pages 56 and 57:

.....

Q Did Dr. Kerin in his conversation with you indicate that Dr. Lewis had also applied for privileges at Milford Hospital?

A As I recall, yes, he did.

Q Did he indicate whether or not both applications were pending?

A As I recall, he stated that Dr. Lewis was given temporary privileges. Dr. Lewis had functioned out in the hospital for a very short period of time. He conducted himself in such a way -- and I don't know the details of it -- but they took away his privileges.

Q This is what Dr. Kerin said?

A As I recall.

Q Did Dr. Kerin also relate that it happened five years previous to your conversation in 1973?

A No, he didn't.

Q Do you know if Dr. Schlein handled any orthopedic cases or assisted in orthopedic cases at St. Vincent's Hospital prior to November 29, 1973?

A He may have been there a few times, once, maybe twice, maybe to put a cast on, but he essentially had no active practice in St. Vincent's Hospital whatsoever. So actually he could not be observed by myself or any of the professional staff or nursing staff to formulate a judgment concerning his particular practice in St. Vincent's Hospital per se.

Q And your letter of November 29, 1973 is not based on any conduct within St. Vincent's Hospital that you know of?

A That's correct.

At Page 63:

..... Q In your conversation with Dr. Kerin, after relating your information you had concerning Orthopedic Surgery Associates did Dr. Kerin ask you to write a letter because it would help in the denial of the application of Dr. Schlein?

A He said, "Walter, I just wish you would help us out. And if you can write a letter to that effect," he said, "we would really appreciate it."

At Pages 71 and 72:

.....

Q Did you get the impression from the telephone conversation that Dr. Kerin was trying to assist or help Dr. Schlein in obtaining privileges?

A No, I didn't get that implication. I got the implication that there was something that came up about Dr. Schlein which may not have been that favorable, which was worthy of further investigation.

Q Did you get the impression at the time of your telephone conversation with Dr. Kerin on November 29th that he was looking for information to help deny the application, to prevent Dr. Schlein, an orthopedic surgeon, from going to practice in Milford?

A I really can't answer that. I don't know what was in his head. But when I told him over the phone that I didn't think I'd consider him for privileges, he seemed to be in total agreement with my feeling, and he asked me, "Would you please put that in writing?" (emphasis supplied)

DEPOSITION OF IRWIN M. SIEGAL, M.D.

July 8, 1975

Excerpts - pp. 4, 5, 6, 8, 9, 10, 11, 12, 14, 15- 19, 23, 24, 25, 26, 28, 29; letter, dated September 7, 1973 from Robert D. Ray, M.D., Ph.D.; letter dated December 3, 1973 from Irwin M. Siegel, M.D.

At Pages 4, 5, and 6:
Direct Examination by Plaintiff's Counsel, William K. Bennett

..... Q And are there other practitioners at the hospital besides the Strauss Group?

A Many.

Q Now, back in 1970 when Dr. Schlein first came to Weiss Memorial or the Strauss Group,--now would be the best way for me to phrase this, Doctor, that he came to the hospital or to the group?

A Dr. Schlein joined the group and became a member of the hospital staff.

Q Fine. He was a member of the staff at Weiss Memorial?

A Yes.

Q And did you work with him then after July of 1970?

A Yes, I did.

Q And for how long a period, Doctor?

A I worked with him from the time that he joined our group in the hospital until early September of that year when I left for a sabbatical abroad.

Q How long were you gone, Doctor?

A One year. After I returned, I worked with him.

Q Fine. So when he first came, you worked with him a matter of a month?

A Several months.

Q Six weeks?

A Something like that, yes.

Q And you went to Israel?

A That's correct.

Q And you returned and you took up your previous work at the Weiss Memorial?

A Correct.

Q And thereafter you worked with Dr. Schlein until he left?

A Until he left.

Q Some months later.

A Yes.

Q Now, would you consider Dr. Schlein a competent physician?

THE WITNESS: A Yes.

MR. BENNETT: Q And in his association there with you, did you work well with Dr. Schlein in your orthopedic duties there?

A Insofar as we worked together, we worked well together.

At Pages 8 and 9:

..... Q Now, Doctor, did any of the hospital personnel, to your knowledge, and by "hospital personnel" I'm referring now to nurses, therapists and employees of the hospital, ever register any written complaints about Dr. Schlein?

A No.

Q Did Dr. Schlein during his period there assist you in operations?

A Yes.

Q Any idea, again this is probably an unfair question, any idea how many?

A Not many, by virtue of the fact that we were both very busy.

Q You were both operating all the time, I take it?

A Not all the time, but--

Q Frequently?

A (Nodding).

At Pages 9, 10, 11 and 12:

.....Q Do you know if while Dr. Schlein was at Weiss Memorial he was associated with any other medical group or institution?

THE WITNESS: A Yes, I do.

Q Do you know this of your own knowledge?

A I do.

Q And with whom was he associated?

A He was on the staff of the University of Illinois College of Medicine, Department of Orthopedic Surgery.

Q Do you know a Dr. Robert Ray?

A Dr. Robert Ray is Chairman of that department.

Q And do you know whether or not Dr. Schlein worked under Dr. Ray?

A I assume he did if he was on the staff of the department.

Q And who is Dr. Ray?

A Dr. Ray is the Chairman of the Department of Orthopedic Surgery at the University of Illinois College of Medicine.

Q Is he recognized in the Orthopedic field as a prominent figure?

A He is indeed.

Q And an expert in the area?

A He is indeed.

Q May I show you what I will ask the young lady to mark as Dr. Schlein Exhibit 1, for identification,--

(Wherapon said document was marked
as Dr. Schlein Exhibit Number 1,
as of 7/8/75, for identification.)

MR. BENNETT: Q --and I'll ask you to look at that for a minute, Doctor.

THE WITNESS: A I've read it.

MR. PARESE: May I see it, please?

MR. BENNETT: Sure, I'm sorry. I'm sure you have a copy of it in your file.

Q To your knowledge, if Dr. Ray is an expert in the field of Orthopedics, would it be your opinion that he would engage people who were not competent?

MR. PARESE: Objection. This witness has no way of knowing.

THE WITNESS: A I don't know whether--

MR. BENNETT: I said based upon his reputation.

A On his reputation, I would assume that based upon his reputation Dr. Ray would have good judgment in this area.

Q Now, have you read the letter of recommendation, Dr. Schlein Exhibit 1, for identification, that I just showed you?

A I have.

Q And whether or not you would subscribe to what Dr. Ray says in this letter?

A You're asking me if I agree with the letter.

Q Yes.

A Well, most of the letter is factual, and facts which I have no access to, not having been present at the time. The part of the letter that is nonfactual, and I quote, "As far as I could ascertain, he is clinically competent, he has originality," et cetera, I would agree with.

Q Thank you. Now, has Dr. Ray, to your knowledge, Doctor, written any papers in the field?

A Oh, Dr. Ray has written numerous papers in the field.

Q Would you consider Dr. Robert Ray one of the outstanding men in Orthopedics in this area?

A I would indeed. He happens to be my chief, and I've written papers with him, and I would agree that Dr. Robert Ray is an outstanding orthopedic surgeon.

Q And does he enjoy a national reputation, also?

A He enjoys an international reputation.

At Page 14 and 15:
Cross Examination by Defendant's Counsel, Mr. Parese:

..... Q Do you recall whether or not there seemed to be more or fewer or about average complaints from patients regarding Dr. Schlein?

MR. COUGHLIN: As opposed to what?

MR. PARESE: As opposed to other surgeons.

MR. BENNETT: That's objected to.

MR. PARESE: You can answer the question.

THE WITNESS: Yes, I'm trying to phrase my answer. Will you please rephrase-- Would you please repeat the question, particularly qualifying more or less or average compared to who.

MR. BENNETT: That's the basis of the objection.

THE WITNESS: I was--

MR. PARESE: All right.

Q In comparison to other physicians in Dr. Schlein's position at the Strauss Surgical Group,--what was Dr. Schlein's position?

A He was on the courtesy staff of the hospital; he was an attending orthopedic surgeon in the Strauss Surgical Group. And my answer to the question would be that my recall would be that it was about average.

At pages 16, 17, 18, 19:

.....

MR. PARESE: Q Sometime during the latter part of 1973, were you contacted regarding a letter of recommendation for Dr. Schlein?

A Yes.

Q By whom were you contacted?

A By a Dr. Robert Kerin, K-E-R-I-N, Chairman of the Credentials Committee for Milford Hospital in Milford, Connecticut.

Q Dr. Kerin requested that you provide him with some information regarding Dr. Schlein?

A He did.

MR. BENNETT: This is objected to.

MR. PARESE: Q And in response to that request, what did you do?

THE WITNESS: A I sent him a letter.

Q Is that the letter dated December 3, 1973?

A Yes.

.....

MR. PARESE: Q Are you familiar with the contents of that letter?

THE WITNESS: A Yes.

MR. PARESE: I'll withdraw the question.

I would like to introduce a copy of the letter for identification. I will have a photocopy made. This is the only copy I have.

MR. BENNETT: Register our objection as outside the scope of the direct and immaterial to the issue. The witness is present here; he can be questioned.

(Whereupon said document was marked as Defendant's Exhibit Number 1, as of 7/8/75, for identification.)

MR. PARESE: Q Dr. Siegel, in the letter you state, "I was disturbed by his behavior which was sometimes explosive."

THE WITNESS: A Yes.

MR. PARESE: Q Could you elaborate on that statement, please, Doctor?

MR. BENNETT: That's objected to. The question is improper.

THE WITNESS: The statement you want me to elaborate on was, "I was disturbed by his behavior which was sometimes explosive."

MR. PARESE: Yes.

MR. SCOVILLE: That question is unfair for the witness and I would wish for his sake if you could be a little less vague.

MR. PARESE: Well, I'd like to know what the witness meant by his statement that his behavior was sometimes explosive.

MR. BENNETT: May the record show that the witness has made no such statement.

MR. SCOVIIIE: Answer.

THE WITNESS: A I guess the two words in question are "behavior" and "explosive", and what I mant was that I was disturbed that Dr. Schlein's frustration tolerance as such was sometimes very short and his temper rather large, and that he did not conduct himself with the equanimity which I felt should be present during the situations that he expressed these episodes of "explosive" behavior.

At Page 23 and 24:
Examination by Plaintiff's Counsel, William K. Bennett
.....

and by other members of the staff.

Q Now, you talk about Dr. Schlein's explosive behavior.

A Yes, sir.

Q Could you describe what you meant by that? Are you referring to something like talking in a loud voice or in an angry tone, is that what you mean?

A I mean evidence of impatience.

Q Anything else, Doctor?

A Well, I mean talking in a loud voice, I mean showing anger, sometimes swearing. I mean all these things.

Q And what would they be connected with? Does your recall enable you to tell us this?

A Again I can recall no specific instance. They may have been connected with personal frustrations or professional frustrations.

Q Now, when you say professional frustrations, would you be referring to anything like, for example, the condition of the instruments or the condition of the operating room?

THE WITNESS: A I think that, or things like that, as well as other things.

MR. BENNETT: Q All right, fine. I presume that you, too, would be upset at things of that nature, Doctor, if you found instruments not in a sterile condition or the operating room not sterile?

A I certainly would be upset.

At Pages 25 and 26:

..... Q So your comparisons really are in the way you would react to a situation as opposed to the way Dr. Schlein reacted to it?

A My comparisons are to the standard that I set.

Q Your personal standard?

A Of course. I have no other one.

Q Yes. And somebody other than Dr. Schlein might react the same way?

A I would think they might.

Q Another orthopedic surgeon under the same circumstances could react the same way?

A I assume that that could be true.

At Pages 28 and 29:

..... Q If you knew. You told us, I guess, you know of no specific complaint at this time, you can't recall any?

A I can't recall a specific complaint.

Q There was no particular complaint made about Dr. Schlein that was of such a serious nature that you would recall it, is that correct? If it were of a very serious nature, you would probably have recall of it, would you not?

MR. PARESE: I object. That's not exactly what the witness said.

MR. BENNETT: Well, I'm asking him a different question.

THE WITNESS: A Well, I don't have any recall of any complaints, Mr. Bennett, and I have no documentation in my files of any complaints.

University of Illinois College of Medicine
The Abraham Lincoln School of Medicine
Department of Orthopaedic Surgery
840 South Wood Street · Chicago, Illinois 60612
Telephone (312) 996-7161

DR. SCHLEIN EX. 1 ed
7/8/75

September 7, 1973

Dr. Robert Kerin, Chairman
Credential Committee
112-114 Broad Street
Milford, Connecticut 06450

Dear Dr. Kerin:

Dr. Allen Schlein joined the staff of the University of Illinois as Clinical Associate on November 1, 1970, having completed his training at the Mayo Clinic. We found him extremely conscientious in meeting his teaching obligations. He supervised an active clinic that met once a week and also assisted the residents in the operating room. During his period with us, he developed an artificial elbow joint in cooperation with Howmet and this was inserted in a patient with an avulsion type of injury to the elbow with initial success. Unfortunately, because the prosthesis was under-designed by Howmet, it broke. Dr. Schlein, in the meantime had left to enter practice on the East Coast. At his own expense, he re-designed the prosthesis, returned to the hospital, located the patient and re-operated on her elbow. The second reconstructive procedure has been successful.

I mention this only to indicate Dr. Schlein's conscientiousness and his concern for patients. As far as I could ascertain, he is clinically competent, he has originality and I believe his moral standards are above reproach. It gives me pleasure to recommend him for an appointment on the staff at the Milford Hospital.

Sincerely yours,

Robert D. Ray

Robert D. Ray, M.D., Ph.D.
Head of the Department of
Orthopaedic Surgery

RDR:el

Deft's Ex 1 id
7/8/75

STRAUSS SURGICAL GROUP ASSOC., S.C.
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H. LEOPOLD BRODNY, M.D.

December 3, 1973

Robert Kerin, M.D.
Chairman, Credentials Committee
Milford Hospital
112-114 Broad Street
Milford, Connecticut 06460

Re: Dr. A. P. Schlein

Dear Doctor Kerin,

I am writing in response to your letter concerning Dr. Schlein.

As you are aware, Dr. Schlein is a graduate of the Mayo Clinic Orthopaedic Residency Program. Additionally, he holds a degree in engineering. He has always been actively interested in orthopaedic biomechanics and, no doubt, excels in this area. During the time he was associated with our group, I was disturbed by his behavior which was sometimes explosive. Although he was able to handle common orthopaedic problems with some competence, I was not overly impressed with his surgical skills, nor with his clinical judgment in difficult cases.

Dr. Schlein's contract was not renewed at the end of his trial period and he left our group by mutual consent.

I trust this is the information you desire.

Yours sincerely,

IRWIN M. SIEGEL, M.D.

IMS:AT

DEPOSITION OF ASOK K. RAY, M.D.

July 26, 1975

Excerpts - pp. 6, 7, 8, 9, 10, 11, 15, 17

At page 6 - 9
Direct Examination by Plaintiff's Counsel, John J. Coughlin

..... Q Now doctor, did you at some time during your medical training or practice of medicine become acquainted with the plaintiff, Allen Schlein?

A Yes.

Q When was that?

A From October 1, 1970 until September 30, 1971.

Q And were you practicing -- this was while you were practicing at the Weiss Memorial Hospital?

A That's correct.

Q And Dr. Schlein was also there?

A That's correct.

Q Did you during this period of time have occasion to work with him at any time?

A That's true.

Q How frequently did you work with Dr. Schlein during this year?

A An average of about six to seven days a week and an average of about ten to twelve hours a day.

Q And this was in the practice of orthopedic medicine?

A That's correct.

Q Did you have occasion to observe him in the treatment of his patients?

A That is correct. Very intimately for one year.

Q Did you also during that time have occasion to observe his clinical judgment?

A That's correct. Very intimately for one full year.

Q Did you also have occasion to observe him in his relationship with other members of the staff at the Weiss Memorial Hospital?

A That was just from observation.

Q Just from your personal observation?

A Right.

Q Did you also have occasion to operate with Dr. Schlein or assist with him?

A Yes, very much so.

Q When you say very much so, how frequently would that have been?

A About at least six to seven times a week -- four to six times a week.

Q Who was the principal orthopedic doctor who assisted Dr. Schlein in surgery during that year, to your knowledge?

A That's myself.

Q What type of cases did you treat generally?

A We treat all kinds of orthopedic cases, including very difficult cases and average cases, all kinds of fractures, multiple injuries, arthritis, and children's disease.

.....

Q Now, going back to your experience with Dr. Schlein, what is your opinion as to Dr. Schlein's clinical judgment?

A I think he is very competent from the point of view of clinical judgment.

Q All right. And upon what do you base that opinion?

A On my personal observation, personal close observation.

Q Could you comment on Dr. Schlein's clinical judgment in difficult orthopedic cases?

A I think he exercised a thorough care, a complete evaluation of the history and complete physical examination, and I think he exercised very complete very competent care.

Q When you were assisting Dr. Schlein in operating did you have occasion to observe his technical skills?

A Yes, I had occasion to observe.

Q And this, I understand, was six or seven times a week for one year?

A Yes.

Q From your own personal observations, relying on your training as an orthopedic doctor, what is your opinion from these personal observations as to Dr. Schlein's technical operating skill as an orthopedic surgeon?

A I find Dr. Schlein a competent orthopedic surgeon.

Q Did he have good technical skills?

A He has good technical skills.

Q Do you know what Dr. Schlein's reputation, general reputation, at the Weiss Memorial Hospital was as an orthopedic surgeon during that year?

A I think he enjoyed a very good reputation amongst his colleagues and amongst the residents and amongst the patients.

Q Would you describe Dr. Schlein's mannerisms, his

At Page 10:

.....

Q Do you, of your own personal knowledge, know of any patient complaint concerning Dr. Schlein's treatment or behavior with the patient during that year at the Weiss Memorial Hospital?

A No, sir. I'm not aware of any such complaint.

Q And you were involved on a day-to-day basis with patients and Dr. Schlein?

A That is true.

At pages 10 and 11:

..... Q From your personal observations and experience with Dr. Schlein, how did Dr. Schlein work with other hospital staff members such as nurses, operating room technicians, x-ray technicians, etcetera?

A I think he worked quite well with them, and I found, you know, he was quite admired by nurses, technicians, and other personnel in the hospital.

Q Why do you say he was admired?

A Admired means -- my definition of admiration is: If a patient becomes sick and he comes and seeks to be treated by one particular doctor, I think that means admiration.

Q Now, you are talking about the hospital staff?

A I'm talking about all the personnel in the hospital.

Q The nurses and different people in the hospital, when they became ill, --

A They came to see Dr. Schlein. That is my observation, and I think, you know, you have to have some admiration to do that.

Q Do you know of any time while Dr. Schlein was at Weiss Memorial Hospital, during your working with him that year, that he would be considered disruptive or had an inability to work with the hospital staff at all?

A I watched very closely Dr. Schlein for one year, and I did not consider myself or I did not hear of such remarks, and I personally don't think he was a disruptive element.

Q Would you describe his attitude towards the other hospital staff personnel other than doctors; such as x-ray technicians, operating room technicians, and what not?

A That was very kind, very conscientious, and just like a good doctor. I don't know what, you know, you are looking for, but his attitude, you mean? I think he was very kind to them. He would go out of his way to help them, take care of them. He would come out at all hours of the night, and that I think is important.

At page 15:

.....

Q In your opinion did Dr. Schlein carry out his reponsibilities to the medical staff and to the hospital in the period of time you knew him at Weiss Memorial Hospital?

A Yes

At page 17:

..... Q How would you describe Dr. Schlein's behavior with respect to fellow staff members at the hospital at the time?

A Staff members? The nurses and doctors?

Q All levels.

A I think I answered that question. I think it was quite admirable.

Q He did not have a pattern of disruptive behavior, to your knowledge?

A No. Absolutely.

DEPOSITION OF JOHN A. ELSTROM, M.D.

July 26, 1975

Excerpts - pp. 3, 4, 6, 7, 8, 9, 10, 13, 14, 15

At pages 3 and 4:
Direct Examination by Plaintiff's Counsel, John J. Coughlin

..... Q State your full name and address.

A John Alden Elstrom. I live at 1625 Sheridan Road, Apartment 410, Wilmette, Illinois.

Q What is your profession?

A I am an orthopedic surgeon.

Q Where did you receive your undergraduate training?

A I received my undergraduate training at the Gustavus Adolphus College, and that's in St. Peter, Minnesota.

Q And where did you go from there, educationally?

A I went to the University of Minnesota Medical School.

Q And in what year did you graduate?

A 1963.

Q And then professionally did you go into an internship or a residency?

A I took an internship and a year of general surgery at Cook County Hospital.

Q And where is that?

A In Chicago, Illinois.

Q And then after did you do a residency anywhere?

A I did an orthopedic residency at the Mayo Clinic in Rochester, Minnesota.

Q And for what years?

A From 1968 until July, 1972.

Q Subsequent to your leaving Mayo Clinic where did you go professionally, as far as practicing your profession?

A I went to Tunis, Tunisia to the Center for Orthopedics. It was a teaching position in an underdeveloped country through Care, Incorporated.

Q And how long did you spend there?

A Sixteen months.

Q And after that where did you go professionally?

A I went to the Department of Orthopedic Surgery at Cook County Hospital.

Q And where are you now professionally, practicing your profession as an orthopedic surgeon?

A I am in the Department of Orthopedic Surgery at Cook County Hospital, affiliated with the University of Illinois.

Q Do you hold any title at the Cook County Hospital?

A Yes. I am Chairman of the Section of Reconstructive Orthopedics in the Division of Orthopedic Surgery.

At Pages 6, 7, and 8:

..... Q Now, do you know the plaintiff in this case, Allen Schlein?

A Yes, sir.

Q When did you first know him?

A I first met Allen Schlein as an orthopedic resident at the Mayo Clinic in 1968.

Q Were you in the same class residency as Dr. Schlein or --

A I believe I was a year behind him.

Q How long was the residency?

A The residency is four years.

Q So you knew Dr. Schlein for three years at the Mayo Clinic?

A Yes. Two or three years.

Q Did you during the period that you knew Dr. Schlein at the Mayo Clinic have personal contact with him?

A Yes. I worked under him as a junior resident.

Q Is Mayo Clinic also a hospital-type facility?

A Yes. Mayo Clinic is a large clinic that is associated with two hospitals.

Q From your own personal knowledge what was Dr. Schlein's reputation among the orthopedic staff at the Mayo Clinic while you were there?

A Dr. Schlein had an excellent reputation as a very intelligent, inquiring, bright orthopedist who is very interested in biomechanical-type investigations. He was known as a good clinician and a competent surgeon.

Q You say he was known as a good clinician. Would you explain that, please?

A Well, he was very thorough in his work. He exhibited an outstanding knowledge of orthopedics.

Q Is this your own impression or is this the reputation he had among others?

A Well, it was my impression, and I think it was his reputation among others.

Q Did you have occasion to work with him in surgery, in treating patients, while you were there?

A Yes, sir.

Q Did you have occasion to observe his clinical judgment?

A Yes, sir.

Q And how frequently was this?

A Well, it was almost every day for a period of three months.

Q All right. And speaking as an orthopedic surgeon, what was your opinion as to his clinical judgment?

A I would say his clinical judgment was excellent.

Q Did you observe his treatment of patients?

A Yes, sir.

Q Did you have occasion to observe him in a patient-doctor relationship?

A Yes.

Q And would you describe his relationship with patients, his mannerisms, etcetera?

A I thought his ability to relate to patients was quite good. He got along quite well with his patients, and I noticed subsequently that he had many of his patients as his friends socially.

At Pages 9 and 10:

..... Q Did you participate in any operations with Dr. Schlein?

A Yes, sir.

Q Would you comment upon your observations as to his operating skills and technical skills?

A I would say that I saw him in his early years as an orthopedic surgeon, probably in his second or third year of orthopedic residency, and I would say at that time he was a competent orthopedic surgeon technically.

Q What type of cases would he work on? I'm talking about the operating room area?

A Difficult fractures, reconstructive surgery of the extremities as a result of arthritic disease.

Q And what type of skills did Dr. Schlein exhibit during the course of these operations that you participated in?

A I think that -- again I say -- I think I have answered this question already -- I think his skill exhibited a competency dealing with these problems which was quite good.

. . . . .

Q Would you comment on Dr. Schlein's ability to work with other hospital staff personnel? I'm talking other than other orthopedic surgeons, from your own personal knowledge.

A I think that his ability to get along with his colleagues was quite good. He still has many friends among my particular year of residents, and is well thought of.

Q My question relates to how did he work with other hospital staff personnel other than orthopedic? I'm talking about nurses, technicians, etcetera, of your own personal knowledge?

A Yes. I think that Al was well liked and got along as well as anybody with the hospital staff.

Q He was at no time considered a disruptive force or difficult to get along with?

A Not to my knowledge.

Q From your own personal knowledge do you know whether or not Dr. Schlein had an interest in his patients, in patient care?

A Yes, I would say his interest in caring for his patients was outstanding.

At Page 13:

..... Q Now, you say you have personal knowledge as to one particular instance where Dr. Schlein went back and replaced an elbow at his own expense at the University of Illinois. How did you have this knowledge?

A It's well known throughout the Department of Orthopedic Surgery of the University of Illinois, and his work on prosthetic elbow replacement is often discussed when difficult problems with the arthritic elbow are presented at orthopedic conferences.

Q Have you been present during these discussions?

A Yes, sir.

Q And for what purpose is Dr. Schlein's work brought up?

A Oh, it's generally discussed as an alternative method of treatment, one of the methods of salvaging a painful elbow and making it movable and painless again.

Q Why is Dr. Schlein brought up as opposed to, say, another orthopedic surgeon?

A Well, there is -- elbow replacements are very difficult, and there are, only, oh, two or three elbows, prosthetic elbows, of any reliability being used now.

Q And is Dr. Schlein's one of these?

A Yes.

At Pages 14 and 15:

..... Q In that capacity have you ever had occasion over the years to contact Dr. Schlein for any purpose?

A Yes. I have talked to him on several occasions about joint replacement in the ankle, which is another difficult area of joint replacement in which he has done some original work.

Q Why would you call Dr. Schlein on this occasion?

A To ask his opinion and his evaluation of other types of joint replacements, and to ask his opinion on a management of patients with an arthritic ankle.

Q Would he be considered an expert in this field or area?

A I would consider him an expert, yes.

Q Now, when you knew Dr. Schlein at Mayo Clinic what was his reputation as concerning his moral ethics and what not?

A They were above reproach. There is no question that he is a man of excellent moral character.

Q Now, do you know if Dr. Schlein enjoys a national reputation of any nature in the orthopedic community?

A I believe he does. Many centers throughout the United States are using his prosthesis use for the elbow and the ankle, and I know of friends in the Mayo Clinic who have used his joint replacement and are very pleased with the results that they have gotten with it.

Q Since Dr. Schlein left his residency at Mayo Clinic and subsequent to his leaving Chicago, have you had occasion to discuss orthopedic problems with him?

A Yes, sir.

Q As a result of this are you able to formulate an opinion as to Dr. Schlein's current competency or concern in orthopedic surgery?

A Yes, sir. I would say that he is quite current in his knowledge of orthopedic methods of treatment, and still a reliable source of information for me in dealing with difficult problems. I see him periodically at the post graduate courses offered by the Academy of Orthopedic Surgery and have had occasion to talk to him by telephone in special instances.

DEPOSITION OF NICHOLAS COASSIN, M.D.

August 26, 1975 and September 2, 1975

Excerpts - pp. 3, 12, 14, 15, 23, 24, 25, 32, 39, 40, 41, 42, 43,
49, 50, 54, 55, 56, 57, 61, 63, 64, 65, 66, 85 - 89

At page 3
Direct Examination by Plaintiff's Counsel, John J. Coughlin:

.....

Q What is your profession?

A I am a general surgeon in Milford, Connecticut.

Q Where do you conduct your practice?

A Milford Hospital.

Q Are you a sole practitioner?

A I have a partner.

Q Who is that?

A Leonard M. Rapoport.

Q Do you hold hospital privileges at any hospital?

A The Milford Hospital.

Q Going back to June of 1973, were you on any hospital staff or committees?

A I am on the Credentials Committee at the Milford Hospital.

At Page 12:

..... Q Is Dr. Naiman associated with any physician?

A He is associated with Dr. Kerin in Milford.

Q That is the chairman of the Credentials Committee?

A Right.

Q At this time were there any orthopedic surgeons in Milford who held full staff privileges at Milford Hospital?

A I don't think so, but there was somebody from Bridgeport for a while and I don't recall his name. I don't think so. I'm not certain.

At Pages 14 and 15:

..... Q Applying what objective criteria?

A The criteria that is listed in Article III, Section 2 of the bylaws.

Q Did Dr. Schlein graduate from an accepted medical school?

A As I recollect, yes.

Q And did he do his residency, his orthopedic residency in an acceptable facility that is recognized by the Milford Hospital?

A Yes.

Q And that is the Mayo Clinic?

A That's right.

Q And there was no question concerning his training?

A No.

Q And experience?

A That's correct.

Q How about his licensing by the State?

A That's correct, no question.

Q And he was certified by the American Academy of Orthopedic Surgery?

A I don't recall that application so I cannot answer that yes or no.

Q He did meet those criteria?

A Yes.

At Pages 23 - 25:

Q I'll rephrase the question. Would it be of significance that the problem or the refusal or the declining to respond to the query on personal behavior was as a result of a personal conflict or difference between the parties rather than any medical difference?

.....

A You're asking me to answer a question I could not possibly answer. Am I hearing you correctly? You are asking me whether or not Dr. Camarda's refusal to write a letter of recommendation for an individual is due to personal differences? I can't answer that.

Q I'm saying would it make a difference if it was for personal differences.

A It certainly would.

Q Do you know if that aspect was investigated at all?

A That aspect was not -- well, let me put it another way: That aspect was discussed at a later meeting when Dr. Schlein was interviewed.

Q If there was a personal difference between he and Dr. Camarda?

A Yes.

Q It had to do with a business relationship, is that correct?

A Yes.

Q Was any further investigation made with Dr. Coventry as to any written complaints against Dr. Schlein, the Mayo Clinic or any particular problems with patients?

A You mean specifics?

Q Yes.

A To my knowledge, no.

Q Your committee, the Credentials Committee, is charged by the bylaws, I understand, with investigating the background of the individual, is that correct?

A Yes.

Q And if an issue such as this is raised, would it not be part of the duty of the Credentials Committee to investigate the factual background to determine the nature of the complaint?

A Well, we would look to other letters, perhaps, to try to resolve that sort of a problem. In general, I doubt that we would be able to have any of these people that write us send those letters with specifics. I doubt that.

Q Was any attempt made by yourself?

A Not by myself.

Q Do you know if any attempt was made by any of the members of the Credentials Committee to determine whether any factual basis existed?

A I don't know.

.....

At Page 25:

..... Q Would the precise nature of the complaint and the conduct involved be of significance in investigating the suitability of the applicant?

A It would be, but you know, we are limited in how far we can go in an investigation.

At Page 32:

..... Q As a result of Dr. Camarda's letter, was any investigation made by a member of the Credentials Committee to determine the nature or the reason for the letter?

A Not to my knowledge.

Q Isn't it the duty of the Credentials Committee to investigate and to determine the facts concerning the applicant?

I would assume also to determine the factual background which would give rise to such a letter?

A Once again this is more easily said than done. If someone writes a letter and does not recommend an individual, it could be very difficult to go over and interview him for an hour or two to see why. I don't think that is done in practice by anyone, even the medical staff.

Q In fairness to the applicant, would it not be important to determine the background for the lack of the good letter recommendation or determine upon what it is predicated or based?

A It is important.

Q But it is not done?

A It wasn't done.

At Pages 39 and 40:

..... Q So part of the reason for the denial of the recommendation of the Credentials Committee or the medical staff was the failure of these doctors to write a letter of recommendation?

A No, but I think it indicates that further attempts were made in the process of this application to secure more information.

Q But no investigation, no reason for not writing was obtained?

A No, not to my knowledge.

Q This was considered as weighing against Dr. Schlein for hospital staff privileges?

A Did I weigh that against him?

Q Yes.

A No, the decision had already been made. It was finished.

Q As a member of the medical staff --.

A You see, following that medical staff meeting, it went to another committee.

At Page 41:

..... Q What was the conclusion of the Credentials Committee concerning Dr. Camarda's letter as a result of the meeting on November 23rd?

A We had heard both sides and it was Dr. Schlein's feeling that Dr. Camarda's letter was written because of personality differences between the two of them, and we were so impressed at that time with Dr. Schlein's remarks that we leaned towards him in accepting this.

Q Did the committee arrive at the conclusion that Dr. Camarda's letter could not be relied on?

At Pages 41 and 42:

A It stated here that the Credentials Committee felt that Dr. Camarda's letter could not be relied upon because there was a difference of opinion between Dr. Camarda and Dr. Schlein, and it was also stated that we were very impressed by Dr. Schlein's manner, his ability to answer questions, and we felt that he would be an asset to this community.

Q Dr. McCreary was contacted subsequently by the Credentials Committee?

A Yes.

Q At Bridgeport Hospital?

A Yes.

Q And he wrote that he did not know anything of the man?

A That's correct. He declined to write a letter because he felt he did not know Dr. Schlein.

Q Which you would not expect him to write a favorable letter of recommendation if he had no knowledge of the man?

A That's right, and I did not look on this as favorable or unfavorable. I thought this was a letter stating that he could not say.

At Page 43:

..... Q Was any investigation done by the Credentials Committee to determine the basis of the letter from Dr. Shanley?

A No, I felt the letter spoke for itself. I didn't investigate it further.

At Pages 49 and 50:

..... Q Was there any investigation, to your knowledge, by the Credentials Committee or the Medical Staff or the Executive Committee of Milford Hospital, of which you are a member, into the background of the letter from Dr. Siegel?

A To my knowledge, no, but, once again, I've never done this, investigate a negative letter, in other words.

Q There was no determination as to the facts or the reasons for the letter?

A To my knowledge, no.

At Pages 54 and 55:

..... Q Was there any clinical evaluation, direct clinical evaluation, made as to Dr. Schlein's competence by Milford Hospital at any time?

A An attempt was made --

MR. RONAI: Objection. The admissions on file indicate the denial was not on the basis of clinical competency but on his ability to work well with patients and members of the staff, so the question is irrelevant. You may answer.

A Did you ask if attempts were made to determine if he was competent --

Q Yes.

A -- or whether he worked well with patients?

Q Clinical competence.

A Not to my knowledge. Competence was not the problem here. It never was. Not competence.

Q What was the problem?

A The problem was behavior and whether or not the Milford Hospital staff could get along with this man because of his reported behavioral problems.

Q Was Dr. Shanley's letter of November 29th relied upon in this regard?

A It was one of the letters that was considered.

Q Was any factual investigation done to determine the nature or the reason why Dr. Shanley wrote such a letter?

A To my knowledge, no.

At pages 56 and 57:

..... Q Did your committee investigate as to whether or not Dr. Shanley had any personal knowledge as to the applicant, firsthand knowledge?

A Only from what was written in his letter. That's the only investigation I know of. I am not familiar with any further inastigation.

Q Did the Credentials Committee, which you're part of, conduct any investigation as to any factual background for Dr. Shanley's letter?

A No. The committee, to my knowledge, did not.

At Page 61:

.....

Q And did you determine that Dr. Schlein served seven quarters as a senior resident?

A I don't recall that. That may have been on his application because this is one of the things he should have listed on his application.

Q From your own knowledge of medicine, are the duties of a senior resident, or the responsibilities, greater than the average resident?

A Yes.

Q Does this say anything about the doctor's competency or clinical judgment or degree of medical knowledge?

A Competency was never the problem here. But to answer your question, it does say something about competency.

Q What does it say?

A We assume from this length of holding a responsible position that he is a competent individual.

At Page 63:

..... Q Did the Credentials Committee, the Executive Committee or the Medical Staff conduct a factual investigation as to any experiences of Dr. Schlein at Mayo Clinic; in other words, patient complaints, colleague complaints?

A Not to my knowledge.

At Pages 64 and 65:

..... Q I show you a letter of November 14th from Weiss Memorial Hospital. Are you familiar with that letter?

A Yes.

Q Does that letter reflect whether or not Dr. Schlein had any problems in carrying out his responsibilities and duties at the Weiss Memorial Hospital?

A It does. The last sentence states --

Q It does?

A -- states that Mr. Zimmerman felt that his ethical and professional standards were considered satisfactory.

Q Does the letter also indicate that he was a member in good standing in the hospital and carried out his responsibilities?

A I'd like to say that, once again, when I read such a letter, this tells me nothing about this man. It is a standard, non-committal type recommendation letter. I think that speaks for itself, that letter.

Q The fact that he carried out his responsibilities means nothing to you?

A Well, the tone of that letter, the tone that letter sets really doesn't tell me a lot about this man. These are pretty standard sentences that I see in many,many recommendations that come to this hospital. It's very easy to select the letters of recommendation that truly endorse an applicant.

Q Are you saying that Dr. Schlein was denied privileges more from what was not said than from what was said?

A No. You're asking me specific questions about this particular letter, and I'm giving you my personal, general impression of this particular letter.

Q Upon receipt of this letter by the Credentials Committee, did you or any member of the Credentials Committee make an inquiry into the background as to his personal experiences at the Weiss Memorial Hospital?

A No, not to my knowledge.

At Page 66

..... Q Can you cite one instance of abrasive behavior on the part of Dr. Schlein which resulted in his being denied privileges at Milford Hospital?

A From my personal knowledge?

Q Yes.

A No.

At Pages 85 - 89:

..... Q Let me just go back now. Dr. Schlein was not denied privileges because of competency or clinical judgment, to your knowledge?

A Absolutely not.

Q His denial was based upon his behavior?

A It appeared that he had behavioral problems at most of the institutions he worked at.

Q And you did not check the first hospital that he was associated with -- that would be Philadelphia General Hospital -- the Credentials Committee did not?

A That's correct.

Q So the Credentials Committee had no information as to whether or not there were any behavioral problems at Philadelphia General?

A To my knowledge, no.

Q Subsequently, Dr. Schlein was associated with Mayo Clinic for fours years.

A Yes.

Q And the committee accepted the recommendation at one point in time from Dr. Coventry?

A That's correct.

Q And there was no factual investigation as to any patient complaints or difficulty with colleagues at Mayo Clinic, is that correct?

A Specific letters of recommendation were not further investigated, that's correct.

Q And the Credentials Committee of the Medical Staff had no factual information from the Mayo Clinic as to Dr. Schlein's behavior with colleagues, patients, nurses, other staff at Mayo Clinic?

A As I recall, that was not mentioned in the letter from Dr. Coventry.

Q And subsequently, Dr.Schlein was connected with the Weiss Memorial Hospital.

A That is correct.

Q And there was no information the committee had from Weiss Memorial Hospital that Dr. Schlein had any difficulty with behavioral problems with staff members, nurses, patients and so forth, is that correct?

A I would have to see the inquiries from Weiss Memorial before I answered that question. Are these in the group of letters at the end of this document that I already said I wasn't familiar with?

MR. RONAI: May I take a short recess, please?

MR. COUGHLIN: We'll take a five-minute break.

(Recess at 4:25 PM.)

THE WITNESS: I read the letter from Mortimer W. Zimmerman from the Weiss Hospital, and he does not make any derogatory comments on Dr. Schlein's behavior.

Q There were no facts or information you had from Weiss Memorial Hospital, in other words, that would indicate any behavioral problem or any interpersonal relationship problem with other colleagues, nurses, staff personnel?

MR. RONAI: Objection. There is a letter from Dr. Siegel which is in the records. I object to the form of that question.

A Did you say the Weiss or the Strauss?

Q Weiss, that's the Weiss group.

A But is the Weiss group and the Strauss group the same?

Q One is a hospital and the other -- off the record.

A Well then, the answer to that question is no......

Q And is my understanding correct that the Credentials Committee did not investigate as to the factual background, whether there were any written complaints by patients, any specific instances which would give rise to Dr. Siegel's letter?

A Not to my knowledge.

Q Now, did the Credentials Committee or the Medical Staff have any information, facts now, from the Bridgeport Hospital, from Dr. McCreery or any other person as to any factual incident where Dr. Schlein demonstrated inability to get along with patients, nurses, professional colleagues at Bridgeport Hospital?

A To my knowledge, no.

Q And the same question with relationship to St. Vincent's Hospital.

A The answer to that is no.

DEPOSITION OF FRED WARREN
President of The Milford Hospital, Inc.

September 11, 1975

Excerpt - pp. 56

At Page 56
Redirect Examination by Plaintiff's Counsel, William K. Bennet:

..... Q At the time they made the decision, your Board had no way of determining whether anything that was in the letters they were considering was true?

A We assumed them to be facts, but to answer your question did we know, no, we did not.

Q The Board did not know whether it was true or not?

A Correct.

DEPOSITION OF DANIEL A. JOHNSON,
Vice President of the Board of Directors,
Chairman of the Executive Committee of the Board of Directors

September 30, 1975

Excerpts - pp. 12, 13, 14, 15, 16, 17, 18, 19, 23, 28, 30, 31, 32, 40

At pages 12 - 15
Direct Examination by Plaintiff's Counsel, William K. Bennett:

.....

Q (By Mr. Bennett) For the record, let me refer to this as the letter of December 28, 1973 from Mr. Plaskowitz, who is the Administrator of the Milford Hospital, to Dr. Schlein.

Have you had an opportunity to familiarize yourself with the contents of this letter, Mr. Johnson?

A I have just glanced at it.

Q Do you recall this letter?

A Yes, sir.

Q The letter sets forth certain reasons why the Ad Hoc Committee felt it necessary to deny Dr. Schlein's application.

A I don't think this is the Ad Hoc Committee. Isn't it the Credentials Committee?

Q Yes. Are you familiar with those reasons? They are four in number.

A Yes, four.

Q Are those the reasons why your Board ultimately denied Dr. Schlein privileges at the Milford Hospital?

A I would say yes.

Q Is there anything in addition to what is set forth in that letter?

A Not that I am aware of.

Q So that for the purposes of our examination here this morning, we are to take it that these are the reasons that your Board denied Dr. Schlein privileges?

A Yes.

Q Would you please look at the first reason, Mr. Johnson, which I believe has to do with Dr. Schlein's clinical experience?

A Yes, sir.

Q What facts did your Board have before you about his clinical experience that caused you to deny this application on that basis?

A I don't recall what facts we had. I think we depended upon, this is my feeling, I depended upon the work of the committee and their recommendation and whatever materials they have.

Q In what form did their recommendation come to you?

A I don't remember.

MR. BENNETT: Your objection can stand. May I ask the witness to read No. 1 again?

THE WITNESS: I will read it.

Q (By Mr. Bennett) I will rephrase the question. Mr. Johnson, what facts did your committee have before you about Dr. Schlein's clinical experience?

A I guess we had copies of letters.

At Pages 15 - 17:

.....

Q You delegated to the Medical Staff and whatever they said your Board accepted with reference to the admission of Dr. Schlein for privileges?

THE WITNESS: I have to qualify by answering and saying that we did not accept carte blanche everything, because in the very beginning of this thing, we sent the material back to the Board and said, "Would you kindly review this further. We want to be sure."

Q But you asked them?

A Ultimately we accepted their recommendation.

Q Your action was merely accepting what they said?

A Yes, sir.

Q That is what I am interested in, whether you exercised independent judgment, and whether you accepted what they said. The answer is --.

A Yes.

Q You accepted what they said?

A Basically yes.

Q You didn't exercise independent judgment? When I say "you", I mean your Board.

A That's right.

Q Did you have any facts? Now I am speaking about facts, Mr. Johnson. When I say "you", again I mean your Board. I don't mean you personally alone. Did you have any facts before you upon which you could evaluate his professional conduct in other institutions?

A No. I don't think we are qualified. I don't consider myself or other members of our Board qualified to exercise judgment in this area.

At Pages 18 and 19:

.....

Q The degrees are small or large. How much of a bearing did the letter from Dr. Carmada have upon your decision not to give privileges to Dr. Schlein.

A I can't answer that.

Q Was it substantial?

A No. The only thing that was substantial in our decision to deny the privilege of the hospital to Dr. Schlein was the final recommendation of the Credentials Committee. Their recommendation, I am sure, was made --.

..... Q (By Mr. Bennett) Your answer goes back to what I said before, it is their judgment and not the judgment of the Board that we are talking about?

A Yes, but the responsibility is the Board's.

Q I am talking about the judgment that was made, I understand that it is their judgment not yours.

A That's right.

At Page 23:

..... Q Are you telling us your decision in ultimately rejecting Dr. Schlein was made on that type of information which was furnished?

A No, I am not. I will say over again that our decision was based upon the recommendation of the Credentials Committee.

Q Really, it is a rubber stamp decision.

A If you want to address it that way.

At Page 28:

..... Q At any time during your deliberations on this application of Dr. Schlein, did the question of his competence come up?

A Not to my recollection.

MR. RONAI: Objection. Let the record show that in the admission requested by plaintiff's counsel, we do not contest his clinical competence. That is not an issue.

At pages 30 - 32:

..... Q (By Mr. Bennett)' Your Board never questioned his ability as a physician?

A No.

.....

Q Did your Board ever question his ethical practices?

A The only way I can answer your question is by saying that our Board, now we are speaking about the Executive Board, has not questioned things or the reasons given by our Credentials Committee.

Q You just took carte blanche whatever they said?

A I would say yes.

Q In your capacity as the Chairman of the Committee which rejected this application, you are not in a position to tell us whether this rejection is based upon fact?

MR. BENNETT: I would suggest the record show that there is a very long pause.

MR. RONAI: Let the record note a pause, whether long or not.

THE WITNESS: It's fair to say it is a pause, I am thinking the matter over.

MR. RONAI: You are preferred to.

THE WITNESS: *I have reiterated my knowledge of facts and there just wasn't any.* I don't have that knowledge. I depended upon our committee to have these facts. I assumed they had certain facts. To what extent, how many and what they were, I don't know. (emphasis supplied)

Q (By Mr. Bennett) So when your Board voted to deny the privileges to Dr. Schlein, you didn't know whether there were any facts to support the recommendation of the Medical Board or not, did you?

A That's correct. By that do you mean did I have personal knowledge?

Q No. I'm talking about your Board.

A I am talking about myself.

Q They didn't have any more information than you had?

A No.

At Page 40:

..... Q (By Mr. Bennett) Well I think you made it pretty clear to us that you exercised no independent judgment as far as this decision is concerned.

Q Isn't that true?

A This cannot be answered yes or no, Mr. Bennett. I understand you. I will tell you that, as an individual, I went on the things that I observed and the feelings I got from the meeting that you attended with Mr. Schlein.

MR. RONAI: By "you", he refers to counsel, Mr. Coughlin.

THE WITNESS: In a broader sense, the decision which came up out of the Executive Committee was made upon the work done by the Credentials Committee and the Medical Staff. Finally, we followed the recommendation because, after that period of time, it became quite clear that for whatever basic reasons, I don't know what it was, that Dr. Schlein unfortunately was unacceptable to this group. So in searching in my own mind, I have nothing personal against Dr. Schlein at all.

DEPOSITION OF GEORGE R. PLASKOWITZ,
Administrator, The Milford Hospital, Inc.

June 2, 1975

Excerpts - pp. 18, 19, 23 - 27, 34 - 40, 43, 92, 102 - 106

At Pages 18 and 19:
Direct Examination by Plaintiff's Counsel, John J. Coughlin:

.....Q Well, let me ask you this: From your knowledge as administrator of the hospital, do you know whether or not Milford Hospital has complied with all provisions of the state Health Code as it pertains to acute care hospitals?

A To the best of my knowledge, yes.

Q And to the best of your knowledge, do you know if Milford Hospital, as a policy, considers itself subject to the state Health Code on all pertinent provisions as it applies to acute care centers?

A I would say yes, as I understand the question.

Q Do you know, from your knowledge as administrator, whether the state Health Code controls or regulates/medical records, nursing services, diagnostic and therapeutic services, pharmacy, dietary services, laundry services, heating, lighting, emergency services, maternity services, infection control at Milford Hospital?

A Your term, I think, was "controls or regulates."

Q Regulates.

A I don't know -- they certainly have a strong influence over what we do. It's possible the two words you use are applicable, but I couldn't say for sure. We -- is that a satisfactory answer?

Q Yes. When you say, "have a strong influence," will you explain that?

A They come down to see that in all probability all of the areas you refer to are maintained at an acceptable level in accordance with what might be labeled current standards. But I interpret the question to mean do they control or regulate. I'm not sure that they have any written regulations or any written controls, and that's why I am in a sense responding the way I did.

Q When they come down, it is expected that Milford Hospital will maintain the minimum standards as set forth in the Health Code?

A Yes, sir. I'm pleased to say I believe we're well above the minimum standards.

At Pages 23 - 27:

.....

Q Do you know whether or not there is any plan within the State of Connecticut that divides up hospitals into areas, geographical areas or health areas?

A   Yes, two come to mind. One is the E.M.S., the Emergency Medical Services Division. The most recent is under new federal legislation, 93-641, I think, which -- we call it the H.S.A., Health Service Areas -- which divides this state into four or five that the governor recommends to HEW.

Q   Taking the first one, E.M.S., Emergency Services -- what exactly is that?

A   That's the intent on the part of government to divide the state into a number of parts to establish within those parts adequate Emergency Medical Services' capabilities to care for the residents of that particular piece of geography, to the best of my knowledge.

.....

At Page 24:

.....

Q   Are you familiar with the Connecticut State plan for construction of hospitals and medical facilities?

A   Very vaguely.

Q   Do you know what it is basically?

A   I believe there's one that exists. The intent behind it is to make sure that whatever construction goes on in any specific hospital is in proportion to the needs of the community.

At Page 25:

..... Q Do you know if Milford Hospital is included in the comprehensive health planning area known as the South Central Valley which the United States government considers the Milford Hospital to be in?

A I don't think I know it by the same name you do, but I think we're both talking about the same thing.

Q What is the South Central Valley Comprehensive Health Plan?

A To the best of my knowledge it is a government-subsidized group that I believe is primarily interested in planning for the particular piece of geography they're interested in or responsible for. But that's the extent of my knowledge.

Q Do you know if Milford Hospital is a tax-exempt organization?

A Yes, sir, we are.

Q Do you know if it has held its tax exempt status, to your knowledge?

A For my tenure, and I'm sure many years before. But how long, I don't know.

At pages 26 and 27:

..... Q Does Milford Hospital pay any tax to the City of Milford?

A Tax, no.

Q Does it pay any tax to the State of Connecticut?

A To the best of my knowledge, no.

Q Or to the United States government?

A To the best of my knowledge, no.

At Pages 34 - 40:

..... Q Does the Commission on Hospital and Health Care regulate the charges the Milford Hospital can make for emergency room services?

A Yes, sir, they can regulate that.

Q Can they also regulate the rates that Milford Hospital can charge for the operating room?

A Yes, sir, they can.

Q And the rates charged by anesthetists?

A At the Milford Hospital?

Q Yes.

A Yes, in its current structure.

Q And x-rays?

A Yes.

Q And for nursing care at the hospital?

A There is no charge per se for nursing care.

Q And the rates that the hospital can charge for prescriptions given to patients during the course of their treatment in the hospital?

A Yes, sir.

Q Does it control the charges that the hospital may make to the patients in almost every area of the hospital?

MR. RONAI: Objection.

A Yes, sir.

Q Would it be fair to say that the Commission on Hospital and Health Care quite extensively regulates the charges that a hospital such as Milford Hospital can charge its patients?

A Yes, sir.

.....

At page 36:

..... Q And has Milford Hospital been receiving this type reimbursement from Medicare and Medicaid since 1966?

A I think it's a safe assumption, yes.

Q Are there any regulations that the federal government imposes upon hospitals in order to participate and receive the Medicare reimbursement for services?

A Yes, there are some. One obvious thing is it has to be licensed, and there may well be others, but they don't come to mind at the moment. There may -- I said it -- there may be others.

At Pages 38, 39 and 40:

····· Q Will you explain to your knowledge, as administrator of the hospital, what the Professional Standards Review Organization is?

A Well, I'm pleased to say, one, we received approval from the Area 2, PSRO-2, the other day -- or they have accepted our standards of the review of the quality of care in our hospital, and have delegated our hospital the authority to maintain our own review of the quality of care conducted within our hospital. In essence, the legislation deals with a continuing review process of the need for acute hospital care and the quality of care the patient receives during their hospital stay. All right?

Q Besides reviewing the quality of health care provided by the hospital, does it also provide for the review of physicians practicing at the hospital?

A It can't do one without the other.

Q They are interwoven?

A Sure.

Q To what extent, to the best of your knowledge as administrator?

A Well, the care cannot be rendered without a physician rendering the care. Therefore, when you're reviewing the quality of care, you are reviewing the physician because he is the one who is in a sense giving the care.

Q Does the statement also apply when Milford Hospital applies for re-licensing each year and the quality of care is reviewed by the State of Connecticut Licensing Division of the Health Department, the quality of care is interwoven between doctor and hospital?

A I don't see the relationship between that and the Department of Health. One is a piece of federal legislation. I'm not sure there is anything in the State Health Department that mandates the outline I gave you further, but if the question is, is there a way to divorce the quality of care from any physician, the answer has to be no.

At page 43:

..... Q And Milford Hospital also receives or has received approval from the Professional Standards Review Organization, Section 2, I believe you said?

A It's not really a section. It's PSRO-2.

Q Which is under the federal act?

A Yes.

Q And the last organization we're talking about, Professional Standards Review Organization-2, relates to the quality of care to be maintained at Milford Hospital?

A I would say, the need for the care and the quality of the care rendered during the period there is a need.

Q And this involves the hospital staff and the physicians?

A Yes.

At Page 92:

..... A Somewhere between the time of the receipt of Schlein's letter requesting the hearing or whatever, the review or whatever it is, and the date of the letter to Schlein.

Q The letter of December 28, 1973, was that written by you?

A I had assistance in its preparation.

Q By whom?

A Counsel, legal counsel.

Q Did you meet with Mr. Ronai at his office or at the hospital?

A I don't remember.

Q Do you know how long the meeting lasted?

A I don't remember.

Q Was the purpose to seek legal advice concerning the letter from Dr. Schlein?

A Yes. Well, if I'm talking to an attorney, I'm talking to him for legal advice. So, yes. Any time I talk to an attorney, it's for legal advice.

At Pages 102, 103, 104, 105 and 106:

.....

Q I refer you to the Minutes of the Special Meeting of the Medical·Staff, December 28, the second paragraph. (Document handed to witness.)

A Yes.

Q There is a statement purportedly made by you: "Mr. Plaskowitz said that Mr. Ronai had been asked to make the letter as strong as possible."

A Yes.

Q Who asked Mr. Ronai to make the letter as strong as possible?

A Who asked him directly? Probably me.

Q For what reason?

MR. RONAI: Objection.

A So that the expression of the staff could be relayed to their satisfaction.

Q It goes on to state that "The statement of the Credentials Committee was projected on the screen, followed by the attorney's revision."

A Yes.

.....Q Who suggested that the statement of the Credentials Committee be prepared so that it could be viewed on a screen?

A I don't honestly remember who made the suggestion. But I think I do know why -- as I recall, I know why the suggestion was made -- to clarify -- to stand up in front of a group of people and read off something and expect everybody in the room to pay attention, et cetera, is difficult at best. Someone in their wisdom felt that if it was projected and everybody could sit down there and read it and it was left up as long as it was deemed advisable, that everybody in the room would have full cognizance of the message. So it was a teaching-training aid, or call it whatever you will -- a means of communication.

. . . . .

Q Why was the counsel for the hospital, Mr. Ronai, asked to make the letter as strong as possible?

A As I recall, to relay it -- to best relay in a proper choice of words the feelings of the staff for its rationale for recommending denial.

Q Was this your own idea?

A I don't remember. It could have been.

Q Was it suggested by the Medical Staff, Chairman of the Medical Staff, by the Credentials Committee or the Executive Committee?

A The minutes already stated that the Medical Staff asked for legal assistance, and I believe this was the area that they asked for legal assistance in.

Q Was the purpose of wording the letter as strongly as possible to deter Dr. Schlein from pursuing his application any further before Milford Hospital?

A I don't know. I would make one observation. The secretary or the author of those minutes -- words mean different things to different people. I don't know what the word "strong" meant to her.

Q You don't deny that you made that statement that Mr. Ronai had been asked to make the letter as strong as possible?

A No. Probably in response to something that was said, and I acknowledged it because I was the communicating official to Mr. Ronai. So if I was asked to do it, I probably said I would do it. And in the recording secretary's opinion, that's the conclusion she summed it up in. I don't remember the details.

Q Was the purpose to word the letter as strong as possible to deter Dr. Schlein from pursuing his application any further?

A No. As I recall, the purpose was to adequately communicate the feelings of the staff.

APPLICATION FOR APPOINTMENT TO THE MEDICAL STAFF

Hospital Milford Hospital City and State Milford, Connecticut

Name in Full Schlein (LAST) Allen (FIRST) Philip (MIDDLE) Date June 7, 1973

Office Address 75 New Haven Ave., Milford, CT. (as of 8/1/73) Telephone [illegible]

Residence Address 205 Booth Street, Stratford, Conn. Telephone 375-8339

Sex M Marital Status M No. of Dependents 2 Citizenship U.S.A.

Date of Birth June 10, 1939 Birthplace Newark, New Jersey

Premedical Education: College or University Stevens Institute of Technology, Hoboken, N.J.

Degree B.S. Date of Graduation 1961

Medical Education: Medical School Jefferson Medical College, Philadelphia, Pa.

Degree M.D. Date of Graduation 1965

Internship: Hospital Philadelphia General Hospital Date 6/65 - 6/66 Rotating ☒ Special ☐

Date Rotating ☐ Special ☐

please see attachment for add. licensures

Licensures Illinois (STATE OR PROVINCE) 7/70 (DATE ISSUED) License No. 36-43489 Registry No. Reciprocity ☐ Examination ☐

Connecticut (STATE OR PROVINCE) (DATE ISSUED) License No. 15621 Registry No. Reciprocity ☑ Examination ☐

Has your license to practice medicine in any jurisdiction ever been suspended or revoked? If so, give full details on separate sheet.

Residencies Mayo Foundation, Rochester, Minn., Orthopaedic Surg. (HOSPITAL AND TYPE OF RESIDENCY) Date 7/66 - 7/70

(HOSPITAL AND TYPE OF RESIDENCY) Date

Fellowship Date

Assistantships Date

Date

Teaching Appointments Clinical associate, University of Illinois Date

Date

Postgraduate Education (INSTITUTION, PRECEPTOR, ADDRESS) Date

(INSTITUTION, PRECEPTOR, ADDRESS) Date

(INSTITUTION, PRECEPTOR, ADDRESS) Date

Membership on Other Hospital Staffs (past and present) ~~Louis A. Weiss Memorial Hospital, Chicago,~~ Illinois; Park city Hospital, Bridgeport Hospital, St. Vincent's Hospital, Bridgeport, Connecticut

Have your privileges at any hospital ever been suspended, diminished, revoked, or not renewed? If so, explain in full detail on separate sheet.

Membership in Medical Societies American Medical Association; Chicago Medical Society; Illinois State Medical Society; American Association of Automotive Medici

Have you ever been denied membership or a renewal thereof, or been subject to disciplinary proceedings in any medical organization? If so, give full details on separate sheet.

Fellowship: American College of Surgeons ☐ American College of Physicians ☒ Date

Fellowship in other specialty colleges (NAME OF COLLEGE) Date

Certified by American Board of (NAME OF BOARD) Date

References and Addresses (preferably preceptors or previous medical associates) Anthony L. Camarda, M.D., 690 Clinton Ave., Bridgeport, Conn.; Robert Ray, M.D., Chmn., Dept. of Or[illegible]pedics, ~~University of Illinois, Wood St., Chicago, Illinois~~

On separate sheets list scientific papers, essays, and theses you have written, and scientific meetings you have attended during the past three years.

Form B-104

ous Experience in Specialties Applied for: LOUIS A. WEISS MEMORIAL HOSPITAL, CHICAGO; PARK CITY HOSPITAL, ST. VINCENT'S HOSPITAL, BRIDGEPORT HOSPITAL, BRIDGEPORT

General Surgery: Number of Operations Performed ______ Number of Operations as Assistant ______

Names of Preceptors ______

necology: Number of Gynecological Operations Performed ______

Number of Gynecological Operations Performed as Assistant ______

Names of Preceptors ______

Obstetrics: Number of Normal Deliveries Performed ______ Number of Abnormal Deliveries Performed ______

Names of Preceptors ______

edicine: (Describe experience in general medicine) ______

Names of Preceptors ______

her Specialties: (Name and describe experience) ______

Names of Preceptors ______

In making application for appointment to the medical staff of this hospital I agree to abide by its bylaws and by such rules and regulations as it may from time to time enact. Moreover, I specifically pledge that I will not receive from or pay to another physician, either directly or indirectly, any part of a fee received for professional services, and I fully understand that any significant misstatements in or omissions from this application constitute cause for summary dismissal from the staff.

Allen Schlein M.D.
SIGNATURE OF APPLICANT

CREDENTIALS COMMITTEE

Above Application Was Reviewed by the Credentials Committee with the Following Recommendations:

ppointment to the Honorary ☐ Active ☐ Associate ☐ Courtesy ☐ Division of the Medical Staff

With Privileges in ______ With Privileges Limited to ______

ppointment to be Deferred ______ Appointment Not Recommended ______

igned: ______ M.D. ______ M.D.

Date ______ ______ M.D.

EXECUTIVE COMMITTEE

Approved by the Executive Committee of the Medical Staff of ______
NAME OF HOSPITAL

Date ______ ______ M.D.
SECRETARY OF EXECUTIVE COMMITTEE

GOVERNING BOARD

Appointed by the Governing Board of ______
NAME OF HOSPITAL

Date ______ ______ M.D.
SECRETARY OF GOVERNING BOARD

CURRICULUM VITAE

ALLEN P. SCHLEIN, M. D.

NAME:	ALLEN P. SCHLEIN, M. D.
ADDRESS:	881 LAFAYETTE BOULEVARD BRIDGEPORT, CONNECTICUT 06603
BORN:	JUNE 10, 1939 in NEWARK, NEW JERSEY
EDUCATION:	PRE-MEDICAL: STEVENS INSTITUE OF TECHNOLOGY HOBOKEN, NEW JERSEY B.S. 1961 MEDICAL: JEFFERSON MEDICAL COLLEGE PHILADELPHIA, PA. M.D. 1965
INTERNSHIP:	PHILADELPHIA GENERAL HOSPITAL JUNE 1965 - JUNE 1966
RESIDENCY:	ORTHOPAEDIC SURGERY, MAYO FOUNDATION ROCHESTER, MINNESOTA JULY 1966 - JULY 1970
LICENSURES:	ILLINOIS, JULY 1970, LICENSE #36-43489 MINNESOTA, LICENSE #17870 CALIFORNIA, LICENSE #618255 CONNECTICUT, LICENSE #15621(Certified 1972)
SPECIALTY AND PRACTICE:	ORTHOPAEDIC SURGERY
HOSPITAL STAFF:	LOUIS A. WEISS MEMORIAL HOSPITAL, CHICAGO, IL PARK CITY HOSPITAL, BRIDGEPORT, CONNECTICUT BRIDGEPORT HOSPITAL, BRIDGEPORT, CONNECTICUT SAINT VINCENT'S HOSPITAL, BRIDGEPORT, CONN.
MILITARY SERVICE:	CAPTAIN, U.S. ARMY RESERVE
TEACHING:	CLINICAL ASSOCIATE, UNIVERSITY OF ILLINOIS
MEMBERSHIPS IN MEDICAL SOCIETIES:	AMERICAN MEDICAL ASSOCIATION CHICAGO MEDICAL SOCIETY ILLINOIS STATE MEDICAL SOCIETY AMERICAN ASSOCIATION OF AUTOMOTIVE MEDICINE
PUBLICATIONS:	A-C SEPARATIONS, FRACTURE CONF. MINNESOTA MEDICINE, VOL. 51, pp. 663-670, MAY 1968 THE INTOXICATED MOTOR VEHICLE OPERATOR, CHAPTER IN SYMPOSIUM OF INT. CONG. OF AUTOMOTIVE AND TRAFFIC SAFETY, JUNE 1969 PERFORMANCE OF A VITALLIUM OLECRANON PROSTHESIS: CASE REPORT WITH 13 YEAR FOLLOW-UP, JOURNAL BONE AND JOINT SURGERY VOL. 52-A, NO. 4, pp. 721-724 MODIFIED ROBERT JONES DRESSING, PROCEEDINGS OF MAYO CLINIC, AUGUST, 1970 THE DUAL AVULSION FRACTURE, THE BRITISH SOCIETY FOR SURGERY OF THE HAND.

CURRICULUM VITAE

ALLEN P. SCHLEIN, M. D.

PAGE TWO

PUBLICATIONS: CONTI.	FRACTURE CONFERENCE, BIRTH FRACTURES, MINNESOTA MEDICINE, VOL. 55, pp. 471-474, MAY 1972
DUAL MALLET FINGER	PRESENTED SMOS MEETING NOVEMBER 6, 1972 PORT SMITH NAVAL HOSPITAL PORT SMITH, VIRGINIA

ALLEN P. SCHLEIN, M.D.

PUBLICATIONS

"A-C Separations," Fracture Conf. Minnesota Medicine, v.LI, May 1968, pp. 663-670

"The Intoxicated Motor Vehicle Operator," chapter in Symposium of Int. Cong. of Automotive and Traffic Safety, June 1969

"Performance of a Vitallium Olecranon Prosthesis: Case Report with Thirteen Year Follow-Up," Journal of Bone and Joint Surgery, LII-A, No. 4, pp. 721-724

"Modified Robert Jones Dressing," Proceedings of the Mayo Clinic, August 1970

"The Dual Avulsion Fracture," British Society for Surgery of the Hand

"Birth Fractures," Fracture Conf. Minnesota Medicine, v. LV, May 1972, pp. 471-474

"Multiple Dislocations of a Single Finger," British Society for Surgery of the Hand

MINUTES OF THE MEETING OF THE CREDENTIALS COMMITTEE
June 22, 1973

A meeting of the Credentials Committee was held on June 22, 1973. Present were Drs. Coassin, DeNegre, and Kerin. Dr. Coppes was away, Dr. Wolfson was unable to attend though in town. Both absent members concurred with the actions taken and described herein.

The application of Dr. Elgosin for fulltime emergency room privileges was considered. The application was complete except for one letter of recommendation. The consensus was to suggest that Dr. Elgosin be granted temporary privileges until his application was complete, inasmuch as the hospital was anxious to availitself of his services as of July 1, 1973 and time was running out.

The applications of Dr. Pendagast and Sulzycki for emergency room coverage were considered. Neither application was more than filled in, there being no references. An office requirement is not necessary for this position. Again temporary privileges were recommended for both until the applications are complete, at the pleasure of the hospital.

Next the applications of Drs. Lewis and Schlein for orthopedic privileges were considered. Two aggrieved members of the medical community were asked to testify before the Credentials Commitee, state, and elaborate their objections to Dr. Lewis.

Mr. Gavin, first, told of repeated experiences and episodes of poor or lack of communication with the overall disharmonious effect on the patients involved. He charged that Dr. Lewis berates female members of the physical therapy staff and felt that harrassment was evident in Dr. Lewis's behavior. Mr. Gavin, upon questioning by the Credentials Committee, did admit that he had a personality clash with Dr. Lewis. He also pointed out that litigation is pending between himself and Dr. Lewis over a financial dispute concerning payment for physical therapy care under Dr. Lewis's sponsorship. He did this so that the Committee would be in possession of all the facts regarding their relationship.

When Mr. Gavin left, the question was raised by the Credentials Committee as to whether personality problems between Mr. Gavin and Dr. Lewis existed rather than the aberrant and unpleasant conduct charged by Mr. Gavin.

Mr. Gavin, however, left a 3-page document to support his testimony. He further requested the Committee to investigate Dr. Lewis's activities in the sports-medicine area and raised the question as to whether Dr. Lewis's conduct was ethical. He further suggested that the chiefs of orthopedics of the three Bridgeport hospitals be questioned. He stated that he suggested this in an effort to support his conviction that Dr. Lewis's behavior would not be an asset to the Milford Hospital and would bear out his contentions.

Next, Dr. Peter Naiman spoke to the Committee. He cited two instances of conduct unbecoming a professional colleague. One involved an ~~eight~~ 5-year-old ~~girl~~ boy under Dr. Naiman's care for a fractured radius. In a manner not clear, Dr. Lewis removed the plaster prematurely and without communication with Dr. Naiman. This may be another exampled to substantiate the Gavin observation of communication. In another instance a teenaged athlete was seen by Dr. Lewis and was asked what butcher inflicted that scar. This was in reference to a previous arthrotomy by Dr. Naiman.

The application of Dr. Schlein was considered, and the Committee felt that since the personality of Dr. Lewis required further investigation and definition and Dr. Schlein is associated with him, it would accord Dr. Schlein the same scrutiny.

The Committee meeting was adjourned.

Respectfully submitted,

Robert Kerin, M.D. Chairman

On July 30, 1973, the undersigned made a phone call to Dr. Mark Coventry, Chief of Orthopedics, Mayo Clinic, Rochester, Minn. in reference to Dr. Allen Schlein.

Dr. Coventry was told that Dr. Schlein was applying for Privileges at Milford Hospital and a request was made for appraisal of this man, since he had served his Residency at Mayo Clinic.

Dr. Coventry remarked that he had heard that Dr. Schlein had become associated with Dr. Lewis (who also had been in the Mayo Clinic) and he remarked that Dr. Schlein "must be socially naive or he would not have joined Lewis". While at Mayo Clinic there were times when Dr. Schlein was difficult to work with and, at times, did not work well with patients. However, in all examinations that were given, he stood highest amongst his peers. Dr. Coventry stated that Dr. Schlein was honest, and ended the conversation by saying that he "saw no reason why he could not be associated with your Hospital."

Earl E VanDerwerker Jr.

Earl E. VanDerwerker, Jr., M.D.
Coordinator of Professional Services

s

MINUTES OF THE MEETING OF THE CREDENTIALS COMMITTEE
August 23, 1973

A meeting of the Credentials Committee was held August 23, 1973. Present were Doctors Coassin, Coppes, DeNegre, and Kerin. Dr. Wolfson was out of the country.

In all, 10 applications were considered. The first was that of Dr. Tortora, applying for consultant privileges in urology. It was felt that an application was best handled by Dr. Elliott Brand and Dr. Parrella getting together and probably appointing Dr. Tortora on the provisional consulting staff in urology.

Dr. Buckley's application was considered; he needs an office address and Connecticut license, and further action is not in order until that is accomplished. Dr. Grote needs a Connecticut license; his letters of recommendation appear in order.

Dr. Elgosin: the remaining letter of recommendation has been received and his application was signed and approved by the Committee. Dr. Pendagast and Dr. Sulzycki both have completed applications and their applications were signed and approved by the Credentials Committee with the suggestion that they be appointed members of the provisional staff.

Dr. Revak needs an office address, a Connecticut license, and letters of recommendation. His application is not ready to process.

Dr. Fabrizio needs three letters of recommendation along with an accounting for the year 1965. Her application is not complete. If necessary, since the hospital wishes to use her by Sept. 1, temporary privileges are recommended. Her application will be reconsidered at the next Credentials Committee meeting.

Next, the applications of Dr. Schlein and Lewis were considered for the second time. Dr. Camarda, chief of orthopedics at the Park City Hospital, was contacted by phone by Dr. Kerin. He stated that both Drs. Schlein and Lewis were competent but was disinclined to respond to questions regarding the behavior of either.

Dr. Shanley, chief of orthopedics at St. Vincent's, was quite outspoken, and called Dr. Lewis's behavior completely unacceptable and abrasive. He pointed out that several complaints have been lodged against Dr. Lewis with the Fairfield Medical Society. He further suggested that the secretary of this society be queried regarding Dr. Lewis. Accordingly, Mr. Arnold Olson, secretary of the Fairfield Medical Society, was called. He did acknowledge that several complaints have been received and he said that he would request that Dr. Nolan, chairman of the Board of Censors, to dispatch the conclusion reached by that Board regarding these complaints against Dr. Lewis.

Dr. VanDerwerker was asked to call Dr. Mark Coventry at the Mayo Clinic regarding both Dr. Lewis and Dr. Schlein. It was learned that Dr. Lewis was asked to leave his residency because of his behavioral problems.

The Credentials Committee instructed its chairman to make inquiry at the Institution of Orthopedic Residency for each of these applicants. Hopefully, at the next Credentials Committee meeting enough information will have been obtained to render a recommendation regarding both these men to the medical staff.

Respectfully submitted,

R Kerin

Robert Kerin, M.D.

ROBERT D. BEARD, PRESIDENT

GEORGE R. PLASKOWITZ, F.A.C.H.A.
ADMINISTRATOR

STEPHE [illegible] RONAI, SECRETARY

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

September 7, 1973

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Connecticut 06460

Dear Doctor Schlein:

Because the evaluations of the Credentials Committee have not yet been completed, the Medical Staff today voted to postpone action on your application until the next staff meeting on October 5th.

Sincerely,

Earl E. VanDerwerker, Jr., M.D.
Coordinator of Professional Services

EEV:rj

University of Illinois College of Medicine
The Abraham Lincoln School of Medicine
Department of Orthopaedic Surgery
840 South Wood Street · Chicago, Illinois 60612
Telephone (312) 996-7161

September 7, 1973

Dr. Robert Kerin, Chairman
Credential Committee
112-114 Broad Street
Milford, Connecticut 06450

Dear Dr. Kerin:

Dr. Allen Schlein joined the staff of the University of Illinois as Clinical Associate on November 1, 1970, having completed his training at the Mayo Clinic. We found him extremely conscientious in meeting his teaching obligations. He supervised an active clinic that met once a week and also assisted the residents in the operating room. During his period with us, he developed an artificial elbow joint in cooperation with Howmet and this was inserted in a patient with an avulsion type of injury to the elbow with initial success. Unfortunately, because the prosthesis was underdesigned by Howmet, it broke. Dr. Schlein, in the meantime had left to enter practice on the East Coast. At his own expense, he re-designed the prosthesis, returned to the hospital, located the patient and re-operated on her elbow. The second reconstructive procedure has been successful.

I mention this only to indicate Dr. Schlein's conscientiousness and his concern for patients. As far as I could ascertain, he is clinically competent, he has originality and I believe his moral standards are above reproach. It gives me pleasure to recommend him for an appointment on the staff at the Milford Hospital.

Sincerely yours,

Robert D. Ray

Robert D. Ray, M.D., Ph.D.
Head of the Department of
Orthopaedic Surgery

RDR:el

BOORUM & PEASE "NOTEAR"

Phone conversation on 9/11/73 with Dr. Mark Coventry, Chief of Orthopedics at the Mayo Clinic.

He phoned in response to my letter to him regarding Dr. Lewis and Dr. Schline. He stated he was disinclined to write a letter for either, but would prefer to respond to my request for information by telephone.

He describes Dr. Allen Schline as an odd guy, a lanky gangly character. He stated that he spent four years at the Mayo Clinic and described him as erratic. Dr. Coventry described him as not having both feet on the ground and further stated that he could not be trusted to be the chief resident in the Mayo program.

One of Dr. Coventry's biggest questions regarding Dr. Schline was why he would ever associate with someone like Dr. Lewis. Dr. Schline was described as having difficulty making decisions, basically probably honest and that he could fulfill a role in a community hospital, such as Milford.

Respectfully submitted,

Robert Kerin, M.D.

RK:cm

A noontime Credentials Committee meeting was held in the auditorium on September 13, 1973. A full complement was in attendance; namely, Doctors Coppes, Coassin, DeNegre, Wolfson, and Kerin.

The matter of the emergency room staff was considered. At the most recent meeting of the medical staff, it was requested that the Credentials Committee consider in what category these men be placed. Reference is made to Doctors Allan Brandt, Pendagast, Sulzycki, Elgosin, and Fabrizio. It was recognized that the E. R. is now manned by mostly surgeons when a full-time E.R. physician is not in attendance.

The recommendation of the Credentials Committee is that the members of the emergency room staff, above enumerated, be grouped under the department of surgery with direct supervision of the chief of surgery, and secondary supervision by chiefs of all other departments.

Next, the application of Doctor Buckley in E.N.T. was considered. He does have a Connecticut license and an office in town, and it was noted that he be granted provisional privileges in the Ear, Nose, and Throat section - Department of Surgery.

Next, the applications of Doctors Lewis and Schlein were reviewed. As of this date, the lettersof recommendation requested have not all been completed.

Doctor Mark Coventry, Chief of Orthopedic Surgery at the Mayo Foundation, called Doctor Kerin. His comments regarding Doctor Lewis and Schlein are appended to this sheet.

In view of what the Credentials Committee already possesses regarding information, it was felt that a vote could be taken.

Doctor Kerin, the chairman, has removed himself from voting on two bases. One is that he is in the same specialty as these applicants; namely, Orthopedic Surgery and by removing himself, he would remove any possibility of conflict of interest. The second reason is that testimony was heard by the Credentials Committee from his associate, Peter Naiman, M.D.

With Doctor Kerin removed, the vote was unanimous to deny the application of Doctor Lewis for privileges on the grounds of information received and documented. It was voted - Doctor Kerin again abstaining - that Doctor Schlein be granted provisional privileges in Orthopedic Surgery.

The Credentials Committee then considered the dangerous situation that exists in the emergency room area, and its means of access and egress. Doctor Kerin termed the area from the incinerator through the emergency room area parking lot up to and beyond the blinking light area, as a potential disaster area. Cars continually come in and out at a high rate of speed and violate the one-way signs. It is strongly recommended that definitive measures now be taken to remedy this situation before a tragedy occurs.

The meeting adjourned at 1:10 PM.

Respectfully submitted,

Robert Kerin

Robert Kerin, M.D.

TELEPHONE 333-1983

ANTHONY L. CAMARDA, M.D.
690 CLINTON AVENUE
BRIDGEPORT, CONN. 06604

September 24, 1973

Re: Allen Schlein

Dr. Robert Kerin
112 Broad Street
Milford, Conn.

Dear Robert:

I am not going to write a long letter to you about Dr. Schlein. He has been with us at Park City Hospital one year, and during this period we have had ample evidence of his qualities.

It is felt that he is forceful and energetic towards obtaining his goals, sometimes to the detriment of his colleagues, be they doctors or nurses. Of his qualities as an orthopaedic surgeon no one will belittle, but he himself seems to have the highest opinion of his own worth. A truly spicy character that needs tempering at times, seems to emerge, despite all efforts to control his lateral drift.

I am sure that time and experience will eventually enable him to understand what constitute the important qualifications of a good physician.

Very sincerely yours,

ANTHONY L. CAMARDA, M.D.

ALC/ms

The Executive Committee Meeting was held on September 25, 1973, at 11:30 a.m. in the auditorium. The meeting was called to order by Dr. Lipkoff. Those present were Doctors Brandt, Coassin, Fink, Kerin, Lipkoff, Messore, Rapoport and VanDerwerker. Mr. Plaskowitz was also present.

Reports of committees were accepted as submitted.

The Credentials Committee report was reviewed. The applications of Dr. Lewis and Dr. Schlein were likewise reviewed. It was the recommendation of the Credentials Committee to approve the application of Dr. Allan Schlein. The application of Dr. Lewis was not recommended. Dr. Schlein was to be given provisional staff privileges.

It was moved and seconded that Emergency Room employees will be members of the Surgical Staff, although they will not be expected to attend Surgical Staff meetings.

The meeting was adjourned at 1:00 p.m.

Respectfully submitted,

Leonard M. Rapoport, M. D.
Secretary
Medical Staff

CREDENTIALS COMMITTEE
October 3, 1973

A noontime meeting of the Credentials Committee was held on October 3, 1973. In attendance were Doctors Coppes, Coasin, Wolfson, DeNegre, and Kerin.

The purpose of the meeting was to consider again the application of Doctor Schlein, who, at a previous Credentials Committee meeting, was given an affirmative recommendation by the Credentials Committee.

Doctor Schlein's most recent letter of recommendation received within the past two days, is at the best, marginal. It comes from the Chief of Orthopedic Surgery at Park City Hospital.

A great deal of discussion took place, and a lot of time was spent pondering how it would be best to handle this applicant. Essentially two conclusions were reached:

1. One of the most important functions of the Credentials Committee is to insure that this community not be exposed to behavior of questionable caliber.
2. Though the accumulated information against Doctor Schlein was not ironclad, it was sufficient for the Credentials Committee to preclude a recommendation for staff appointment.

With Doctor Kerin having removed himself from voting, all voted that Doctor Schlein be denied privileges at the Milford Hospital, and that this recommendation be made to the Executive Committee and to the Staff.

Respectfully submitted,

Robert Kerin, M.D.

MINUTES OF THE SPECIAL EXECUTIVE COMMITTEE MEETING
October 4, 1973

A special Executive Committee Meeting was held on October 4, 1973, at 12:30 P.M. Present were Doctors Brandt, Chiappinelli, Fink, Kerin, Messore, Parrella, Philbrick, Rapoport, and Lipkoff and Mr. Plaskowitz.

The meeting was called to consider a decision of the Credentials Committee concerning the application of Dr. Allan Schlein. The Credentials Committee had a meeting on the day prior to this meeting at which time they reconsidered their decision to accept Dr. Schlein and recommended to the Executive Committee that he not be granted privileges at Milford Hospital. After a lengthy discussion a vote was taken as follows:

2 votes for the Credentials Committee's decision not to grant privileges

5 votes against the recommendation

2 abstained

It was thus voted by the Executive Committee that Dr. Allan Schlein be granted privileges in Orthopedics at Milford Hospital.

Also considered were the applications of Doctors Fabrizio and Buckley; Dr. Fabrizio for the Emergency Room and Dr. Buckley on the ENT service. The Credentials Committee recommended that they be approved and the Executive Committee concurred.

Respectfully submitted,

C. J. Lipkoff, M.D.
President
Medical Staff

MINUTES OF THE MEETING OF THE MEDICAL STAFF
October 5, 1973

The meeting was called to order at 8 A.M. by Dr. Lipkoff. Minutes of the previous meeting were read and approved. Minutes of two Executive Committee meetings were read. At a meeting September 25 the action of the Credentials Committee had been approved and the application for provisional staff privileges in orthopedic surgery of Dr. Lewis was not recommended, that of Dr. Allan Schlein was recommended. (Subsequent to that meeting, Dr. Lewis withdrew his application.) As a result of further information received, the Credentials Committee met again on October 3 and reversed its recommendation for Dr. Schlein's approval. The Executive Committee at a special meeting on October 4 voted two votes to five with two abstaining, that its approval of Dr. Schlein's application should stand.

The Executive Committee had also approved the Credentials Committee recommendation that the Emergency Room physicians be members of the Surgical Staff without having to attend surgical staff meetings, and the recommendation that the applications of Dr. Fabrizio and Dr. Buckley be approved.

After a good deal of discussion and the presentation of several opinions, the Medical Staff voted not to approve Dr. Schlein's application by a show of hands: 9 members voting for granting privileges, 15 against, 9 abstaining.

It was moved by Dr. Rapoport, seconded, and
VOTED that the Emergency Room physicians be members of the surgical staff.

It was VOTED without dissent
that the application of Dr. Tuula Fabrizio for Emergency Room (provisional staff) privileges be approved
that the application of Dr. Donald F. Buckley for Ear, Nose, and Throat privileges on the provisional staff be approved.

The somewhat equivocal wording of the bylaws relative to appointment of staff members was explained by Dr. Fanslow of the Bylaw Committee as following JCAH recommendations.

ANNUAL MEETING	It was agreed unanimously to postpone the annual meeting, set for October, until November.
NOMINATING COMMITTEE	The Chair appointed as nominating committee Doctors Keegan, Baron, Weston, Barney, and DeNegre.

The need for receipt of medical information on the patient by the X-ray Department when x-ray tests are ordered, also by the EKG Department, was discussed and the suggestion made that the patient's chart should accompany the patient when tests are made.

Mr. Daniel Johnson, chairman of the Milford Hospital Fund, then asked for staff support of the fund, with a thought to income tax provisions at the end of the fiscal year.

Two coming meetings were announced, the William Fischer Memorial Lecture October 19 at which Dr. Markowitz will speak on the management of streptococcal infections, and the Medical Society meeting October 16 with Dr. Brandt as speaker on the Emergencer Room.

Dr. Parrella asked for a viewbox in ICU for use when emergency x-rays must be scanned. The Chair passed on the record room request that Sunday preoperative histories and physicals not be put on the tank (line 6) since they are not retrievable from medical and pediatric dictation on Monday morning, and Dr. Naiman suggested a dictating machine in the Emergency Room.

The meeting was adjourned at 8.45 A.M.

Respectfully submitted,

Mary V. Kamenoff

Mary V. Kamenoff, RRA

October 5, 1973

Mark Coventry, M.D.
Chief of Orthopedics
Mayo Clinic
200 First Street, S.W.
Rochester, Minn.

Dear Dr. Coventry:

Allan P. Schlein, M.D. has applied to our Hospital for Privileges in the Department of Orthopedics. After Medical Staff committee review of his credentials, and a full Medical Staff discussion earlier today, our Staff voted (9 For, 15 Against, 9 Abstaining) to recommend to the Board of Directors that he be denied Privileges. None of the votes during the Executive Committee's and the Credentials Committee's process of evaluation and review were unanimous, and, on one occasion in a two week period, one of the Committees completely reversed its original recommendation.

I guess what I am trying to point out is the mixed reaction to the request for privileges. I am aware that you have spoken to the Chairman of our Credentials Committee, Dr. Kerin, and our Coordinator of Professional Services, Dr. VanDerwerker, but would very much appreciate your dropping me a line indicating your evaluation of Dr. Schlein (he was a Resident at Mayo Clinic during the four year period July 1966 through June 1970). In view of the sensitivity, on a national basis, relative to Medical Staff appointments, re-appointments and privileges, your letter would be of great assistance when the Board of Directors meets on October 23, 1973 to consider and act upon the Medical Staff recommendation relative to Dr. Schlein's application.

My sincere thanks, in advance, for your anticipated cooperation, and, should there be any question, please do not hesitate to call or write.

Respectfully,

George R. Plaskowitz
Administrator

GRP/s

Mayo Clinic

Rochester, Minnesota 55901
Telephone 507 282-2511

Mark B. Coventry, M.D.
Orthopedic Surgery
Adult Reconstruction

October 10, 1973

George R. Plaskowitz, F.A.C.H.A.
Administrator
The Milford Hospital
2047 Bridgeport Avenue
Milford, Connecticut 06460

Dear Doctor Plaskowitz:

Allan Schlein was a resident at Mayo from July of 1966 to July of 1970. During that time his performance was considered perfectly adequate. There were some slight inconsistencies, for at times his examination writing was extremely brillant and at other times he seemed to be in less than normal contact with the problems that faced him day to day in a practical way. We had no concern whatever with his morals or his basic character, which we felt was honest. We did not feel Doctor Schlein was quite ready for chief residency and thus was not appointed to that position, hoping he would mature a bit more after leaving our residency.

I can recommend him to you for your staff.

Sincerely,

Mark B. Coventry

Mark B. Coventry, M.D.

MBC:df

October 10, 1973

Mac Ellis K. Glass, M.D. & Donald S. Dworken, M.D.
50 Ridgefield Avenue
Bridgeport, Conn.

Dear Doctors Glass and Dworken:

In compliance with our telephone conversation of the other day, I should like to ask you the following questions concerning Dr. Allan Schlein:

1. An estimate of his competence and clinical judgment.
2. A statement concerning his relations with his peers and with the hospital staff.
3. A statement concerning his ethical and moral character.

Thank you for a prompt reply.

Yours very truly,

C. J. Lipkoff, M.D.
President, Milford Hospital Medical Staff

CJL/s

Notes on Conversation with Dr. Nathan Friedman of Stratford on 10/11/73

Re: Dr. Allan Schlein

Dr. Friedman was informed by me that Doctors Lewis and Schlein have applied for Privileges at this Hospital, and I inquired as to what experience he may have had with respect to these two candidates.

Dr. Friedman states that Dr. Schlein's name has not come up before the Board of Censors of which he is Chairman, and no complaints have been registered against him. Those involving Dr. Lewis were strictly with regard to Dr. Lewis, and did not in any way involve Dr. Schlein. Dr. Freidman further stated that in his own contacts with Dr. Schlein, he has found him to be straight forward, a "nice fellow", who appears to be entirely competent to do his job. He knows of nothing detrimental in his character or performance and has received no reports relative to him before the Board of Censors.

L. M. Rapoport, M.D.

s

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

October 19, 1973

Based on the rumor that Dr. Allan P. Schlein was denied privileges at both Bridgeport and St. Vincent's Hospitals, an inquiry was made to determine the validity of this assumption. Upon discussion with the Hospital Administrators of both institutions, it was made very clear that the rumor had no justification, inasmuch as Dr. Schlein was granted Courtesy Privileges in both hospitals approximately one year ago.

George R. Plaskowitz

ROBERT D. BEARD, PRESIDENT GEORGE R. PLASKOWITZ, F.A.C.H.A. STEPH[illegible] [illegible] RONAI, SECRETARY
ADMINISTRATOR

✓

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

October 25, 1973

C. J. Lipkoff, M.D.
Chief of Staff
Milford Hospital
Milford, Conn. 06460

Dear Dr. Lipkoff:

At its regularly scheduled meeting on Tuesday, October 23, 1973 the Board of Directors Executive and Professional Committee considered the recommendation of the Medical Staff relative to the application for Privileges of Allen P. Schlein, M.D. Upon completion of review and discussion of material attached, it was unanimously voted to refer the matter back to the Medical Staff for further consideration as the material reviewed did not appear adequate to deny Dr. Schlein privileges.

The Executive and Professional Committee of the Board of Directors is scheduled to meet again on November 27, 1973, with one of the items of agenda being the taking of action on the Medical Staff's additional consideration and recommendation on this very important matter.

If there are any questions, please call or stop by.

Sincerely,

George R. Plaskowitz

George R. Plaskowitz
Administrator

GRP/s

Enc.

November 6, 1973

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

It came to my attention yesterday that your office was under the impression that you had Privileges at Milford Hospital.

Your application has caused considerable controversy, and at the present time has been referred back to the Credentials Committee for their review, consequently, at this time, you do not have Privileges at Milford Hospital.

Sincerely,

Earl E. VanDerwerker, Jr., M.D.
Coordinator of Professional Services

EEV/s

November 14, 1973

Robert Kerin, M.D.
Chairman, Credentials Committee
Milford Hospital
112-114 Broad Street
Milford, Connecticut 06460

Re: Dr. Allen Schlein

Dear Dr. Kerin:

In regard to your recent inquiry, this will confirm that Dr. Schlein received a courtesy appointment to the Department of Orthopedics on July 1, 1970, and subsequently resigned from the staff in March of 1972. He came to Weiss Hospital to join the Strauss Surgical Group, with which group he was affiliated during his entire stay at the hospital. When he left that group, his resignation was automatic under the terms of his association with them.

Our records show that during the entire time of his staff appointment, he was a member in good standing at the hospital, and carried out his responsibilities both to the medical staff and to the hospital. He came to Weiss directly from a residency program at Mayo's, and we felt that he gained much both in experience and relationships during the short time he was with us. He certainly had had excellent training, and his ethical and professional standards were considered satisfactory.

Sincerely,

Mortimer W. Zimmerman
Executive Director

MWZ/cv

CREDENTIALS COMMITTEE
November 23, 1973

On November 23 a noontime meeting of the Credentials Committee was held. Present were Doctors Coassin, Coppes, Wolfson, Kerin, Fink, and Lipkoff. Doctor Allen Schlein had written to Doctor Kerin requesting that he meet with the Credentials Committee; he was invited to this meeting and attended.

Doctor Schlein was appraised of his present status; namely, that he had a good letter in his behalf and a detrimental letter. He stated that "he had heard" that statements were made about him not in his best interests and asked for the opportunity to put to rest anything that had been said that would adversely affect his competence, ethic and behavior. He was asked by Doctor Kerin, "from whom he had heard these comments:" He replied, "The Hospital Administrator." He further stated that, "he spent almost an hour with the Hospital Administrator and that he would be unable to divulge the contents of that discussion." The Credentials Committee made no effort to extract that information. At this point, Doctor Schlein was given the floor and was asked to speak freely and to state clearly on why he wished to come to Milford. He stated that he had many patients in his office practice from Milford and felt that he could best serve them within the Milford setting.

Doctor Schlein then stated that he had learned that Doctor Carmada had not supported him favorably and proceeded to describe Doctor Carmada as an aging man who had many more interests than orthopedics. He further explained that Doctor Carmada had become adverse to "the two young punks"; namely, Doctor Lewis and himself. Doctor Carmada was described as having finished his residency program 30 years ago and was still doing procedures in that vintage rather than in a updated and modern manner.

He went on to explain that Doctor Carmada had attempted to sell his practice and his home to himself and Doctor Lewis and that it was at this point, Doctor Schlein felt he would be ill advised to continue any type of association with Doctor Carmada. He pointed out that during Doctor Carmada's hernia repair, Doctor Schlein was asked to cover Doctor Carmada's patients.

Doctor Schlein was able to provide rebuttal on many of the statements that Doctor Carmada made. When Doctor Schlein was asked why Carmada considered him a detriment, he stated that he was more of a threat to Carmada's practice which was declining.

Doctor Lipkoff asked about an instrument throwing episode at the Park City Hospital and Doctor Schlein replied that it was done more in fun than as a menace. He went on to elaborate that the same nurse who was the recipient of the thrown instrument came to him subsequently with a member of her family for care. This indeed impressed the Credentials Committee that the incident was certainly more fun than foul.

Doctor Schlein again impressed the committee with his desire to bring better care to those residents of Milford who sought his services. He left an indelibe impression that Carmada had wronged him only because of personal bias and not because of behavior or competence. All shook hands with Doctor Schlein at 1:00 PM and thanked him for giving his personal appraisal of a sensitive topic. Every member of the committee felt that he raised this one significant question: Had Carmada wronged him in a vituperous manner in an effort to prevent his coming to Milford?

After discussing the matter, the Credentials Committee felt that Carmada's letter could not be relied upon. Doctor Schlein's manner, his handling himself, his ability to answer questions, and his inability to hide anything left every member with the impression that he would be an asset to this community.

The Credentials Committee decided upon the following tact and instructed the chairman to:

1. Write to the Chief of Orthopedic Surgery at the Bridgeport and St. Vincent's Hospitals and request a positive letter of recommendation from each so that the fears and doubts generated by Doctor Carmada could be laid at rest.
2. Write to the Strauss Clinic where Schlein indicated he was employed to secure their appraisal of this applicant.

The meeting was adjourned at 1:30 PM.

Respectfully submitted,

Robert Kerin

Robert Kerin, M.D.

FAIRFIELD COUNTY ORTHOPEDIC ASSOCIATES, P. C.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY
4749 MAIN STREET
BRIDGEPORT, CONNECTICUT 06606
PHONE 372-4331

ALTER T. SHANLEY, M.D.
JOEL H. EISENBERG, M.D.

November 29, 1973

Dr. Robert Kerin, Chairman
Credential Committee
12-114 Broad Street
Milford, Connecticut

Re: Allen Schlein

Dear Dr. Kerin:

Pursuant to our telephone conversation on November 29, 1973 in regard to Allen Schlein, I would under no circumstances extend this man privileges to Milford Hospital. I say this after considering this man's profession and ethical performance in the Bridgeport Community. He is in association with Dr. William Lewis who again has not approached orthopedics professionally in this community.

Dr. Lewis has privileges at St. Vincent's Hospital. Privileges were extended to him before I was Chief of Department of Orthopedics. These men do not practice in our hospital.

Sincerely yours,

WTS/g

WALTER T. SHANLEY, M.D.
Chief of Department of Orthopedics
St. Vincent's Hospital
Bridgeport, Connecticut

STRAUSS SURGICAL GROUP ASSOC., S.C.
4640 MARINE DRIVE • CHICAGO, ILLINOIS 60640 • 275-3200

GENERAL SURGERY
SIEGFRIED F. STRAUSS, M.D.
ARTHUR H. SCHWARTZ, M.D.
DAVID D. KRAM, M.D.
W. J. TANNENBAUM, M.D.
JEROME M. SILVER, M.D.
RICHARD L. BIGG, M.D.
ICHAEL A. FRIEDBERG, M.D.

GYNECOLOGY AND OBSTETRICS
HERMAN A. STRAUSS, M.D.
AWRENCE I. BERNARD, M.D.
CARL JAROLIM, M.D.
STEPHEN B. RUSKIN, M.D.

UROLOGY
HERBERT SOHN, M.D.
RAYMOND FIRFER, M.D.
BRUCE M. BERKSON, M.D.

ORTHOPAEDIC SURGERY
IRWIN M. SIEGEL, M.D.
L. K. TOPOUZIAN, M.D.

THORACIC AND VASCULAR SURGERY
DOUGLAS R. NORMAN, M.D.

ANESTHESIOLOGY
W. C. LIU, M.D.

EMERITUS
M. LEOPOLD BRODNY, M.D.

December 3, 1973

Robert Kerin, M.D.
Chairman, Credentials Committee
Milford Hospital
112-114 Broad Street
Milford, Connecticut 06460

Re: Dr. A. P. Schlein

Dear Doctor Kerin,

I am writing in response to your letter concerning Dr. Schlein.

As you are aware, Dr. Schlein is a graduate of the Mayo Clinic Orthopaedic Residency Program. Additionally, he holds a degree in engineering. He has always been actively interested in orthopaedic biomechanics and, no doubt, excels in this area. During the time he was associated with our group, I was disturbed by his behavior which was sometimes explosive. Although he was able to handle common orthopaedic problems with some competence, I was not overly impressed with his surgical skills, nor with his clinical judgment in difficult cases.

Dr. Schlein's contract was not renewed at the end of his trial period and he left our group by mutual consent.

I trust this is the information you desire.

Yours sincerely,

IRWIN M. SIEGEL, M.D.

IMS:AT

ORTHOPAEDIC SPECIALTY GROUP, P. C.

EDWARD P. McCREERY, M. D.
GEORGE TRUCHLY, M. D.
MURRAY A. MORRISON, M. D.
B. S. SHETTY, M. D.

FAIRFIELD 255-2839
•
BRIDGEPORT 334-4222

325 REEF ROAD
FAIRFIELD, CONN. 06430
—
50 RIDGEFIELD AVENUE
BRIDGEPORT, CONN. 06610

December 3, 1973

Dr. Robert J. Kerin
112 Broad Street
Milford, CT 06460

Dear Dr. Kerin:

You asked me for a letter of recommendation for Dr. Alan P. Schlein who is applying for orthopaedic privileges at Milford Hospital.

Dr. Schlein has orthopaedic courtesy privileges at Bridgeport Hospital. This is not a hospital staff appointment and is open to any licensed M. D. practicing in Bridgeport who already has a staff appointment at another hospital in Bridgeport. A courtesy permit means that the holder of such may treat his patients at Bridgeport Hospital but only under the supervision of the section or department chief.

To my knowledge, Dr. Schlein has participated in the treatment of only one patient hospitalized at Bridgeport Hospital and has performed no surgery as such at Bridgeport Hospital.

In view of the above facts, I do not feel that I am in a position to give you a recommendation for Dr. Schlein.

Very truly yours,

E P McCreery

Edward P. McCreery, M. D.
Chief, Section of Orthopaedic
Surgery
Bridgeport Hospital
Bridgeport, Connecticut

jt

December 6, 1973

The Credentials Committee met December 6, 1973. Present were Doctors Coppes, Coassin, DeNegre, Kerin, Lipkoff and Wolfson. As instructed, the chairman wrote to the chiefs at Bridgeport and St. Vincent's Hospitals. It was pointed out to the Credentials Committee that the chairman called both Dr. Shanley and Dr. McCreery to apprise them of the purpose of the request; namely to obtain a positive letter and thereby depreciate Dr. Carmada's opinion. Dr. McCreery responded to the statement that he could not write one on the basis that Dr. Schlein did not practice in his hospital. Dr. Shanley stated that under no circumstances would he recommend the man on either a professional or ethical basis.

Dr. Irwin Siegal was reached by phone in Chicago at the Strauss Clinic and stated he could not write a positive letter in his support.

Dr. Coppes stated that he spoke with Dr. Lebowitz, a physician in the Bridgeport community. He stated that he felt Dr. Carmada would not write knowingly a letter demeaning Dr. Schlein without some basis rather than bias alone.

Dr. Lipkoff reported that he requested a letter from Dr. Glass, an orthopedist practising at Park City Hospital. Dr. Glass declined to comply with the request, and Dr. Lipkoff was unable to specify for what reason.

Accordingly, the Credentials Committee, with Dr. Kerin abstaining, unanimously voted again not to recommend the applicant for privileges at the Milford Hospital

The meeting was adjourned at 1:30 p.m.

Respectfully submitted,

Robert Kerin

Robert Kerin, M. D.

RK/cps

MINUTES OF THE MEETING OF THE MEDICAL STAFF
December 7, 1973

Meeting was called to order by Dr. Lipkoff at 8 A.M. The minutes of the previous meeting were read and approved. Minutes of the Executive Committee meeting were read.

BYLAWS The Chair noted that two bylaw amendments approved for the first time at the November meeting needed a second vote, the change in annual meeting from October to November, and the inclusion of emergency room physicians in the surgical staff.

It was MOVED, seconded, and VOTED to approve these changes.

72-HOUR ORDERS The Chair reported that it has been recommended by the Patient Care Committee and approved by the Executive Committee that the regulation under C.10 for continuation of narcotics, sedatives, antibiotics, steroids and anticoagulant drugs ordered without limitation on dosage for 48 hours, should be changed to 72 hours.

It was MOVED, seconded, and VOTED that this be approved.

CREDENTIALS: DR. SCHLEIN The Chair reviewed the history of Dr. Schlein's application for staff privileges in Orthopedics and called on the chairman of the Credentials Committee, to which it had been referred back at the November meeting. Dr. Kerin said that in view of the suggestion that the damaging letter from Dr. Camarda might have been the result of a personality clash, he had requested positive letters of recommendation from the chiefs of orthopedics of the other two Bridgeport Hospitals, Dr. Shanley of St. Vincent's and Dr. McCreery of Bridgeport Hospital. Dr. Kerin read the two letters aloud, neither one of which was a recommendation. He also read a letter from the administrator of Weiss Hospital in Chicago indicating that Dr. Schlein's work there had been satisfactory. Dr. Kerin said that the Credentials Committee had again voted to refuse privileges to Dr. Schlein.

It was MOVED by Dr. Brand, seconded, and VOTED to accept the report of the Credentials Committee.

Dr. Fox raised the question of what constitutes provisional membership, and Dr. Fanslo observed that all staff memberships are subject to yearly review by the Credentials Committee. (Mr. Plaskowitz later noted that review of a doctor's work in the hospital is continuous, as well.) The Chair read the bylaws, Article IV Section 7, covering provisional staff. A report on an interview with Dr. Schlein was requested from the floor, and Dr. Lipkoff said that Dr. Schlein had come to lunch at Milford Hospital and chiefly discussed his relations with Dr. Camarda, who has what he apparently feels is a personal bias. Dr. Fanslow then outlined the procedure for appellate review as give at length in the bylaws.

The Chair noted that more time and effort had been given to Dr. Schlein's application than to any other that he could remember. The Board of Directors had been concerned that sufficient documentation had been lacking heretofore. The letters from Dr. Shanley and Dr. McCreery do give documentation.

It was MOVED by Dr. Brand and seconded by Dr. Corsaro that the Medical Staff recommend to the Board of Directors that Dr. Schlein be denied privileges at Milford Hospital.

By a show of hands, 26 voted in favor of the motion, no one against, with 7 indicating abstention. The motion was CARRIED.

CHART SUMMARY The Chair passed on the request of the Medical Records Committee, approved by the Executive Committee, that chart summaries be dictated and typed for all charts requiring summaries.

DR. VANDERWERKER reviewed the 72-hour rule for medications ordered without limitation. Dr. Fox said that the Pharmacy Committee is still working on recommendations about drug orders. A report will be forthcoming later.

The nursing service will be holding practice Code 99 drills.

The original Medicare stipulation that the physician write on the order sheet that the patient required hospitalization is to be reactivated for patients under Title XIX. In order to guard against omission, the first page of the order sheet of every chart will carry the certification that the patient requires the level of care offered in Milford Hospital. Signature on the order sheet will then meet the requirement. This must be recertified for Title XIX patients after 60 days.

MR. PLASKOWITZ spoke of the new float rotation of the nursing service and of its educational advantages to the nurses. Assignment as much as possible is according to the nurse's choice.

He showed a flyer being passed out today to hospital employees at entrances to the grounds inviting them to attend "a special union meeting for all Milford Hospital workers" on Monday.

The meeting was adjourned at 8.40 A.M.

Respectfully submitted,
Mary V. Kamenoff
Mary V. Kamenoff, RRA

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

December 7, 1973

Allan P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

In accordance with the Bylaws, Rules and Regulations of the Medical Staff of Milford Hospital, I am informing you that the Medical Staff, at a meeting held earlier today, voted to recommend to the Board of Directors denial of your application for Privileges.

I believe you have a copy of the Staff Bylaws, Rules and Regulations, but, in the event this is not so, I have enclosed a copy should you desire to become more familiar with this aspect of the Hospital's overall operation.

Very truly yours,

George R. Plaskowitz
Administrator

GRP/s

Enc.

CC: C. J. Lipkoff, M.D.
Chief of Staff

ORTHOPAEDIC SURGERY ASSOCIATES, P.C.
75 NEW HAVEN AVENUE
MILFORD, CONNECTICUT 06460
(203) 878-5791

December 18, 1973

The Milford Hospital
2047 Bridgeport Avenue
Milford, CT 06460

Att: George R. Plaskowitz
Administrator

C. J. Lipkoff, M.D.
Chief of Staff

Dear Sir:

This will acknowledge your letter of December 7, 1973, advising me that the Medical Staff voted to recommend to the Board of Directors denial of my application for privileges.

I hereby give notice of appeal of such recommendation in accordance with Article VIII of the By-laws, Rules and Regulations of The Milford Hospital. In accordance with Article VIII, Section 3b of the By-Laws, I request to be notified in writing in concise language of the reasons, subject matter and/or acts that were considered in making the adverse recommendation by the Medical Staff.

Being conscious that the By-Laws, Rules and Regulations of Milford Hospital indicates that the hearing in such situations is for the purpose of resolving matters on an intra-professional basis and thus the affected practitioner may not be represented in any phase of the hearing by an attorney-at-law, I, nonetheless, request the right to be represented at the hearing by an attorney. Denial of my privileges is a denial of my right to practice my profession and further reflects on my competency and/or professional conduct. The right to practice my profession of an orthopedic surgeon and my good reputation is a serious matter and can only be protected under the circumstances by an attorney. I specifically request that the hearing committee exercise its discretion and permit me to be represented by counsel of my choice.

The Milford Hospital
December 18, 1973
Page 2

I will await your reply setting forth the precise reason for the denial of my application, the date of the hearing, and an answer to my request to be represented by an attorney at the hearing.

Very truly yours,

Allen Schlein M.D.
Allen P. Schlein, M.D.

APS:ds

Received by messenger
4 pm 12/18/73
(P.O. not used)

From the desk of LAWRENCE I. BERNARD, M.D.

To Robert Kerin, M.D. 12/12/73

re: Dr A. Schlein

Dear Dr Kerin,

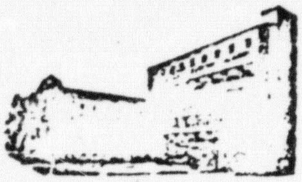
My being away on vacation prevented me from answering your letter of Nov 26, 73. I was told by Dr Siegel, our orthopedic surgeon, that he answered you a similar letter you addressed to him:

Dr I. Siegel had a very close contact with Dr Schlein, working in the same department. I fully agree with his evaluation especially as his professional ability is concerned.

Sincerely Yours

L. Bernard

4640 Marine, Chicago, Ill 60640



PHONE (203) 368-0201

PARK CITY HOSPITAL

695 PARK AVENUE
BRIDGEPORT, CONN. 06604

P. N. SPELKE, R. N.; F.A.C.H.A.
ADMINISTRATOR

December 19, 1973

Dr. Karin
Chief, Credentials Committee
Milford Hospital
Milford, Connecticut 06460

Dear Dr. Karin:

I am writing on behalf of Dr. Alan Schlein who tells me that his application for staff membership has been refused on the basis of alleged unethical conduct and ungentlemanly behavior. Dr. Schlein has been a member of our medical staff since July 1972. I am not aware of any complaints against him on this basis during this period. In my own dealings with him I have found him honest, helpful, straight foreward and courteous.

Sincerely,

Peter E. Hope-Ross, M.D.
Chief of the Medical Staff

PEHR/cdk
cc: Mr. George Plaskowitz

PHONE (203) 368-0201

PARK CITY HOSPITAL

695 PARK AVENUE
BRIDGEPORT, CONN. 06604

P. N. SPELKE, R. N.; F.A.C.H.A.
ADMINISTRATOR

WALTER S. WIGGINS, M. D.
DIRECTOR, PROFESSIONAL SERVICES

December 19, 1973

Mr. George Plaskowitz
Administrator, Milford Hospital
Milford, Connecticut

Dear Mr. Plaskowitz:

In regard to the application of Dr. Allen P. Schlein, I am pleased to inform you that all that I have seen and heard of Dr. Schlein's professional work and ethical conduct has been worthy of commendation.

My opportunity for direct observation and evaluation of Dr. Schlein is based on the past nine months since I have been at this hospital. I have had recent cause to seek his professional assistance. My closer relationship with Dr. Schlein during these past two weeks confirms my initial reaction.

Sincerely yours,

Walter S Wiggins M.D.
vac

Walter S. Wiggins, M.D.
Director, Professional Services

WSW/vac

cc: Dr.Karin - Chairman,Credentials Committee
Dr.Lipkoff - Chief of Staff

PHONE (203) 368-0201

PARK CITY HOSPITAL
695 PARK AVENUE
BRIDGEPORT, CONN. 06604

P. N. SPELKE, R. N.; F.A.C.H.A.
ADMINISTRATOR

December 22, 1973

Mr. George Plaskowitz
Administrator
Milford Hospital
2047 Bridgeport Avenue
Milford, Connecticut

RE: Dr. Allen P. Schlein

Dear Mr. Plaskowitz:

I have known Dr. Schlein since he has been in the Bridgeport area, approximately 18 months. During this time, my contact with him has been virtually day-to-day in seeing patients at Park City Hospital. I do not think I could evaluate his technique in the operating room but I know that his evaluation with patients pre-operatively has always appeared careful and diligent and he has been extremely conscientious in his post-operative care. He has operated on many of my patients and I have nothing but praise from these people as to his professional ability.

During this time, I have also been a member of the Medical Executive Committee at Park City Hospital in my position as Chief of Medicine. During all the meetings that I attend I have never heard a word of criticism expressed against Dr. Schlein by the numerous standing hospital committees (e.g. tissue, infection, etc.) or by the members of the surgical service. To my knowledge he has practiced his speciality of orthopedic surgery with care, diligence and with the upmost ethical considerations. I would recommend Dr. Schlein highly for any hospital staff appointment.

Very truly yours,

William A. Hoffman, M.D.
Chairman, Department of Medicine

WAH:jm

CREDENTIALS COMMITTEE

The Credentials Committee has made recommendation that Doctor Schlein not be appointe to the Provisional Staff of the Milford Hospital. The Credentials Committee may summarize its position as follows:

> Doctor Camarda after a year of observation states that, "He is forceful and energetic toward obtaining his goals sometimes to the detriment of his colleagues be they doctors or nurses."
>
> Doctor Shanley states that under no circumstances would he recommend privileges after considering his professional and ethical performance in the Bridgeport Community.
>
> When asked to write a positive letter of recommendation, Doctor McCreery states that Doctor Schlein does not practice in his hospital and feels that he is not in a position to give a recommendation to Doctor Schlein.

None of the letters from the three chiefs is acceptable to the Credentials Committee and certainly none can be construed as recommendations for the applicant.

> Doctor Irwin Siegel of the Strauss Surgical Group with whom Doctor Schlein was associated, was asked his opinion regarding the applicant. He states, "During the time he was associated with our group, I was disturbed by his behavior which was sometimes explosive. Although he was able to handle common orthopedic problems with some competence, I was not overly impressed with his surgical skills nor his clinical judgment in difficult cases."

The above material provided the basis for the Credentials Committee to vote unanimously against Dr. Schlein's application, and so recommended to the Medical Staff.

Respectfully submitted,

Robert Kerin

Robert Kerin, M. D.

MINUTES OF THE
SPECIAL MEETING OF THE MEDICAL STAFF
December 26, 1973

A special meeting of the Medical Staff was held on December 26, 1973, called to order by Dr. Lipkoff when a quorum was present at 8.15 A.M. The purpose of the meeting was to act on a request by Dr. Schlein for a hearing on the staff's action not to approve his application for membership.

A report of this action had been sent to him by registered mail. In response, he has requested a hearing, as provided for in the bylaws. (See letter attached).

The Credentials Committee was then asked to formulate the specific reasons for its decision, and the Committee has submitted its formulation. (See attached).

It was noted that the bylaws provide for an intraprofessional hearing, and that the decision as to whether both sides shall be represented by attorneys at law is up to the hearing committee.

A question was raised from the floor about the advisability of including in the formulation Dr. Schlein's association with a practitioner whose professional status has been under question. In Dr. Kerin's absence, Dr. Coppes reported that this had never been given weight by the Credentials Committee because they felt that association was irrelevant in the consideration of Dr. Schlein's application. Suggestion was made that a blanket statement "for these and other considerations" be included.

The Chair requested approval of the Credentials Committee statement, and Dr. Buckman asked if it had been checked by the hospital lawyer. Mr. Plaskowitz said that the hospital lawyer had been made available for this purpose but had not been the attorney consulted.

It was moved by Dr. Baron, seconded by Dr. Brand,
that the material be shown to the hospital counsel.
The Chair explained that within the time limit set up in the bylaws, a letter to Dr. Schlein must be in the mail on Friday, before which formal action must be taken by the medical staff. It was agreed that the staff will meet on Friday morning at 8. By a show of hands, with none dissenting,
the motion was VOTED.

The Chair announced for consultation with the staff the following as an
AD HOC COMMITTEE: Dr. Weston, Chairman; Drs. Bayless, Gruskay, Marney,
Corsaro, Hare, and Scully, with Dr. Haiman as a consultant
without vote if judgment on orthopedic matters is required.
No objection was made; however, it was noted that Dr. Weston is away and will not be back until January 2.

The Chair read the bylaw on the appointment of a member of the Executive Committe or of the staff to represent the Executive Committee in presenting the facts and examining witnesses at the hearing, and appointed Dr. Kerin to this post.

Some demur was made from the floor lest Dr. Kerin as an orthopedic surgeon be construed to exemplify a conflict of interests. It was stated by Dr. Corsaro that at the Credentials Committee meetings at all times Dr. Kerin had been most meticulous in refraining from voting on any matter on which he might have seemed to be biased. Considerable discussion ensued.
It was MOVED, seconded, and VOTED without dissent
that Dr. Kerin represent the Executive Committee.
Dr. Martin expressed the hope that the hearing could be kept on an intraprofessi basis without the presence of lawyers.
The meeting ended at 9 A.M., postponed until 8 A.M. December 28, 1973.

Respectfully submitted,
Mary V Kamenoff, Mary V. Kamenoff, MD

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

December 28, 1973

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

In response to your December 18, 1973 request for a hearing, I herewith give you notice that pursuant to Article VIII, Section 3(a) of the Bylaws, Rules and Regulations of the Medical Staff of The Milford Hospital, Inc., an AD HOC Hearing Committee of the Medical Staff will conduct a hearing on Thursday, January 3, 1974 at 6:00 PM in Conference Room I in Milford Hospital.

The Hearing will be conducted according to the procedure set forth in Article VIII, Section 5(a-l) of the Bylaws, a copy of which is in your possession, and which should be consulted prior to the hearing. Your personal presence is required. However, as you correctly note in your December 18, 1973 letter, that Article VIII, Section 5 (j) establishes that the purpose of the hearing is to resolve "on an intra-professional basis, matters bearing on professional competency and conduct". It was the judgment of the AD HOC Hearing Committee that the spirit of intra-professional consideration and candor could be best accomplished if neither side was represented at the hearing by an attorney-at-law. Accordingly, your request for representation by an attorney-at-law at this stage of the proceedings is respectfully denied.

The Medical Staff's recommendation to the Board of Directors that your application for privileges be denied was based on the following reasons, which are set forth herein as they appear verbatim in the minutes of the Medical Staff meeting.

1. That the evaluations of your recent clinical experience received from Chiefs of Orthopaedic Surgery at the Park City Hospital and St. Vincent's Hospital were essentially negative with respect to your professional reputation and ability to work well with others.

2. That the evaluation of your professional conduct in current and past hospital associations has developed a substantial record that your behavior in the performance of your professional duties demonstrated a difficulty in working well with patients, as well as with other members of the various medical staffs on which you served.

3. That your inability to obtain an affirmative recommendation with respect to your professional competence from the Chiefs of Orthopaedic Surgery at two local hospitals, together with the pattern of abrasive behavior with respect to fellow staff members at other hospitals, as well as other facts developed in the record, raised substantial doubts that you possessed the demonstrated competence, good reputation and ability to work well with others so as to ensure a high quality of care to patients at Milford Hospital.

4. And finally, such other facts which will appear in the record failed to demonstrate to the Medical Staff that the approval of your application for privileges would be in the best interests of the health needs of the Milford Community.

Very truly yours,

George R. Plaskowitz
Administrator

GRP/s

CC: C. J. Lipkoff, M.D.
Chief of Staff

PHONE (203) 368-0201

PARK CITY HOSPITAL

695 PARK AVENUE

BRIDGEPORT, CONN. 06604

P. N. SPELKE, R. N.; F.A.C.H.A.
ADMINISTRATOR

December 31, 1973

Robert Keron, M.D.
Chairman, Credentials Committee
Milford Hospital
2047 Bridgeport Avenue
Milford, Conn. 06460

Dear Dr. Keron:

This letter is to certify that Dr. Allen P. Schlein has been a member of the Orthopedic Staff at Park City Hospital since 1972. Now an assistant attending in Orthopedics, he is considered eminently qualified as an orthopedic surgeon. He has participated as a member of the Tissue and Utilization Committees, fulfilling the obligations of Active Staff membership. He has performed conscientiously and capably, and we consider him a responsible member of our Medical Staff.

We recommend that he receive privileges at Milford Hospital.

Sincerely,

Pauline N Spelke

(Mrs.) Pauline N. Spelke
Administrator

PNS/mk

cc: Mr. George Plaskowitz ✓

January 4, 1974

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

This is to inform you that a copy of the transcript of the Hearing of the AD HOC Committee of the Medical Staff of Milford Hospital of January 3, 1974 will be forwarded to you on receipt. Within seven days of this, the Committee will render a decision and recommendation to the Medical Staff for further action.

Sincereyy,

Robert A. Weston, Jr., M.D.
Chairman, AD HOC Committee
Medical Staff of Milford Hospital

RAW/s

cc: George R. Piaskowitz
C. J. Lipkoff, M.D.
W. E. Barney, M.D.
A. E. Bayless, M.D.
T. P. Corsaro, M.D.
F. L. Gruskay, M.D.
R. Karin, M.D.
P. T. Haiman, M.D.
M. R. Scully, M.D.

L

THE AD HOC COMMITTEE
January 21, 1974

The Ad Hoc Committee met in Conference Room #1 of Milford Hospital at 5:15 PM to review the findings of the Hearing of 3 Jan 74 re: Doctor Allen Philip Schlein, a transcript copy having been submitted to Doctor Lipkoff, the Chief of Staff. Present were Doctors Bayless, Barney, Corsaro, Gruskay, Naiman, Scully, and Weston.

The discussion centered mainly on the new letters received concerning Doctor Schlein, both favorable and unfavorable. Previous letters are a matter of record in the earlier recommendation of the Credentials Committee and the subsequent staff vote to deny privileges to Doctor Schlein. Article III, Section 2 of the Bylaws seem to apply in particular to the problems concerning Doctor Schlein. The following recommendation was adopted:

> The Ad Hoc Committee has considered the previously and newly submitted letters, some favorable and some unfavorable, to Dr. Allen Philip Schlein. Dr. Schlein impressed us with his work in Total Joint Arthroplasty, but we do not feel this expertise is appropriate to the present needs of Milford Hospital. By a unanimous vote, the Ad Hoc Committee does not find sufficient reason to recommend a change in the previous staff decision denying Dr. Allen Philp Schlein an appointment to the Milford Hospital Staff.

The meeting was adjourned at 6:05 PM.

Respectfully submitted,

Robert A. Weston

Robert A. Weston Jr., M.D.
Chairman

j

MINUTES OF SPECIAL MEETING OF THE MEDICAL STAFF
January 22, 1974

A Special Meeting of the Medical Staff was called to order at 8:10 AM by Doctor Liphoff.

The Chair stated that the meeting had been called to hear the decision of the staff appointed Ad Hoc Committee on the application of Doctor Allen Philip Schlein. Doctor Schlein's application had been disapproved by the Staff and as was Doctor Schlein's right according to the Bylaws, requested a hearing. The Ad Hoc Committee under the Chairmanship of Doctor Weston, studied the transcript from the hearing and made the following recommendation:

> "The Ad Hoc Committee has considered the previously and newly submitted letters, some favorable and some unfavorable, to Doctor Allen Philip Schlein. Doctor Schlein impressed us with his work in Total Joint Arthroplasty, but we do not feel this expertise is appropriate to the present needs of Milford Hospital. By a unanimous vote, the Ad Hoc Committee does not find sufficient reason to recommend a change in the previous staff decision denying Doctor Allen Philip Schlein an appointment to the Milford Hospital Staff."

A MOTION was made by Doctor Martin, SECONDED, and VOTED unanimously to accept the Ad Hoc Committee's report as read.

The meeting adjourned at 8:15 AM.

Respectfully submitted,

Leonard M. Rapoport

Leonard M. Rapoport, M.D.
Secretary

j

BEST COPY AVAILABLE

January 23, 1974

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

Please be advised that pursuant to Article VIII, Section 5 of the Bylaws, Rules and Regulations of the Medical Staff of Milford Hospital, Inc., the Ad Hoc Hearing Committee, after due deliberation and review of the transcript of the proceedings recommended to the Medical Staff on January 21, 1974 that your application for appointment to the Medical Staff be denied.

On January 22, 1974, at a duly convened special meeting of the Medical Staff, the Medical Staff voted unanimously to accept the Ad Hoc Committee's recommendation and report.

Very truly yours,

George R. Plaskowitz
Administrator

GRP/s

2-27-74

AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS
430 North Michigan Avenue, Chicago, Illinois 60611
(312) 822-0970

January 25, 1974

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[illegible], Vermont

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Re: John L. Bianchi, M.D.
Worcester, MA

Phillip A. Schlein, M.D.
Bridgeport, CN

John W. Hauzenblass, M.D.
Portsmouth, NH

Jeffrey B. Steckler, M.D.
New Britain, CN

John V. Mangieri, M.D.
Bridgeport, CN

Dear Doctor:

There is lack of adequate information regarding the qualifications of these candidates for Fellowship in the American Academy of Orthopaedic Surgeons. In order to properly evaluate the candidates in relation to the high ideals of the Academy, we are seeking all available information about them.

Remember it is a privilege to be a member of the Academy. Your frank opinions of these candidates will help the Admissions Committee to make enlightened decisions. Your remarks will be held in strict confidence.

Please record your comments on the enclosed forms and return them in the addressed envelope to:

James M. Cary, M.D.
Chairman-Elect
Regional Admissions Com. # 1
181 E. Cedar St.
Newington, CN 06111

An early reply will be appreciated so that the applications can be given full consideration.

If the applicants are unknown to you, no reply to this inquiry is necessary.

Cordially,

R. Kirklin Ashley, M.D.

R. Kirklin Ashley, M.D.
Chairman, Admissions Committee, AAOS

enc.

Forty-first Annual Meeting January 17-22, 1974
Convention Center, Dallas, Texas

ORTHOPAEDIC SURGERY ASSOCIATES, P.C.
75 NEW HAVEN AVENUE
MILFORD, CONNECTICUT 06460

WILLIAM S. LEWIS, M.D.
ALLEN P. SCHLEIN, M.D.

February 1, 1974

George R. Plaskowitz
Administrator
Milford Hospital
2047 Bridgeport Avenue
Milford, CT 06460

Dear Mr. Plaskowitz:

This will acknowledge receipt of your letter dated January 23, 1974, advising me that the Ad Hoc Hearing Committee recommended my application for appointment to the medical staff be denied. Pursuant to Article 8, Section 6 g, I hereby request appellate review of the denial of my application for appointment to the medical staff by the governing body.

An appellate review is requested to be on the record with the exception that I request to introduce new materials not available at the time of the Ad Hoc hearing. This exception is made under Article 8, Section 6 g. The new material will consist of letters of explanation or clarification of previous letters submitted and also a letter from a doctor who was unavailable for the hearing.

Very truly yours,

Allen Schlein

Allen P. Schlein, MD

AS:ds
cc: C. E. Lipkoff
Chief of Medical Staff

Rcd 2-5-74
G.P.

BENNETT, KAPUSTA & COUGHLIN
ATTORNEYS AT LAW
76 BROAD STREET
MILFORD, CONNECTICUT 06460
TELEPHONE 874-6773

WILLIAM E. BENNETT
ROBERT KAPUSTA
JOHN J. COUGHLIN
~~LEO P. CARROLL~~
JOHN J. BENNETT

ANSONIA OFFICE
88 MAIN STREET
ANSONIA, CONNECTICUT
TELEPHONE 735-3321

February 6, 1974

Stephen E. Ronai
81 Broad Street
Milford, CT 06460

Re: Dr. Allen Schlein/Milford Hospital

Dear Steve:

This letter will serve to confirm our telephone conversation of Tuesday, February 5, 1974, in regards to the appellate review request of Allen Schlein, MD.

It is agreed that the 21 day requirement as set forth in the By laws will be expressly waived by Dr. Schlein and myself as his attorney and that the hearing will be held on Wednesday, February 27, 1974, at a time later to be agreed upon. Kindly prepare a waiver for Dr. Schlein's signature so that the record will be in order. I have discussed the waiver with him and he is in accord.

It is understood that written briefs and/or memoranda will be submitted on or before February 20, 1974. In the event the hospital intends on filing a written brief or memoranda, I would expect the same to be filed on the same date with a copy furnished to Dr. Schlein and myself as his counsel.

It is expected that oral arguments at the time of the hearing will not be extensive as our position will be clearly set forth in the brief. Additional matters will be submitted which, to my understanding, you have no objection to. At the time of the appellate review, Dr. Schlein will be present and a member of our firm will be appearing on his behalf for purposes of representing him.

Thank you for your cooperation in this matter.

Very truly yours,

John J Coughlin

JOHN J. COUGHLIN

JJC:ds
cc: Allen Schlein

The undersigned, being duly authorized by the Milford Hospital, hereby acknowledges receipt of the foregoing letter this 6th day of February, 1974.

Stephen E Ronai

Stephen E. Ronai
For the Milford Hospital

GITLITZ, RONAI & BERCHEM
A PROFESSIONAL CORPORATION
COUNSELORS AT LAW
81 BROAD STREET
MILFORD, CONNECTICUT 06460
TEL. 203 878-8515

WILLIAM GITLITZ, 1933-1966
STEPHEN E. RONAI
ROBERT L. BERCHEM

HARVEY P. ULLMAN
JOHN A. PARESE

NEW HAVEN OFFICE
138 ORANGE STREET
NEW HAVEN, CONN. 06510
TEL. 203 865-2116

February 7, 1974

Mr. George Plaskowitz
Administrator
Milford Hospital, Inc.
2047 Bridgeport Avenue
Milford, Connecticut

Dear George:

Enclosed please find a copy of a letter from Dr. Schlein's counsel dated February 6, 1974 which I have received by hand and acknowledged receipt in behalf of the hospital. A copy of my response thereto is also enclosed.

Mr. Coughlin's request for his personal appearance at the hearing to present additional oral argument is not a right granted to counsel by the medical staff By-Laws with respect to a hearing before the governing body, or its Executive Committee. However, the request must be viewed from the vantage point of the United States District Court, which apparently will be the next forum for review if the Executive Committee affirms the decision of the medical staff. From the point of view of having to defend a decision of the Executive Committee, it would appear that every procedural advantage that is consistent with the concept of fair play and due process should be afforded the applicant. Therefore, it is my recommendation that the Executive Committee grant Dr. Schlein the right to have his counsel appear to make an oral presentation. Mr. Coughlin assures me that his presentation will not be lengthy.

At this time, I have not decided as to whether or not a reply brief or memoranda supporting the medical staff/hospital's position should be filed. In any event, if the decision is in favor of filing, the time limits referred to by Mr. Coughlin must be adhered to.

At this point, I would send Dr. Schlein a letter (suggested text annexed) with a copy to Mr. Coughlin and copies to the appropriate members of the medical staff who have been involved in the decision, i.e. Chief of Staff, Credentials Committee Chairman and the Chairman of the Ad Hoc Committee.

Thanking you for your cooperation in this matter, I am

Very truly yours,

Stephen E. Ronai

SER/lab
Enclosures

February 7, 1974

Dear Dr. Schlein:

I have your letter requesting an appellate review by the governing body of the denial of your application for appointment to the medical staff. Your February 1, 1974 letter was also received on February 5, 1974.

In accordance with the correspondence dated February 6, 1974 and February 7, 1974 between your counsel, John J. Coughlin, Esquire and the hospital's counsel, Stephen E. Ronai, Esquire, please be advised that the date of the appellate review is February 27, 1974 at 2:30 P.M. in Conference Room 1 of the Milford Hospital, 2047 Bridgeport Avenue, Milford, Connecticut. The review shall be conducted by the Executive Committee of the Board of Directors as authorized by Article VIII, Section 6(d) of the medical staff By-Laws.

Your request for oral argument is granted and pursuant to Article VIII, Section 6(f) you are herewith requested to be personally present for the purposes set forth therein. Further communications concerning any additional procedure and further information relating to the preparation for the hearing will be transmitted to you by your counsel who will be advised of any developments by the hospital's counsel, Stephen E. Ronai.

Very truly yours,

George Plaskowitz
Administrator

(this letter must be sent certified mail, return receipt requested and must be mailed no later than 2/15/74).

Norm A. Hagman, M.D.
Fred F. Nathan, M.D.

ROCKFORD ORTHOPEDIC ASSOCIATES, LTD.
Practice Limited to Orthopedic Surgery
2500 NORTH ROCKTON AVENUE—SUITE 201
ROCKFORD, ILLINOIS 61103
Office: 968-0529

February 7, 1974

Mr. George R. Plaskowitz
Milford Hospital
2047 Bridgeport Ave.
Milford, Conn.

Dear Mr. Plaskowitz:

I have been asked by Dr. Allen P. Schlein to write you an impression of him as well as my evaluation of him as a doctor and an individual.

Let me state my knowledge of Dr. Schlein. We were residents together at the Mayo Clinic and Mayo Foundation and our years of residency overlapped by 3 years. I knew him from 1966 through 1969 during my years at the Mayo Clinic. Subsequently I was in the United States Air Force for 2 years and returned to join Dr's Siegel, Topouzian and Schlein in practice with a multispecialty group at Louis A. Weiss Memorial Hospital in Chicago, Illinois. The group went under the corporate name of Strauss Surgical Group, S.C. During the years of 1971 through 1973 I worked in close association with Dr. Schlein for the better part of one year's time. I found him a conscientious and agreeable practitioner who I felt was extremely capable and innovative. There was no time in which I had any difficulty communicating with Dr. Schlein and I felt him to be a reasonable man. He subsequently left the Strauss Surgical Group prior to my departure from the Strauss Surgical Group and sought practice in Connecticut. I subsequently left the group in August of 1973 and am currently pursuing my orthopedic practice in Rockford, Illinois at Rockford Memorial Hospital.

I certainly hope you look favorably upon his application for staff appointment to your hospital.

Sincerely,

Fred F Nathan

Fred F. Nathan, M.D.

FFN:mlk

This letter was received
at the Hospital on 2/12/74.
The Hearing by the ad Hoc
committee of the medical staff
was held on June 3. 1974

Rcd 2-12-74
GRP

GITLITZ, RONAI & BERCHEM
A PROFESSIONAL CORPORATION
COUNSELORS AT LAW
81 BROAD STREET
MILFORD, CONNECTICUT 06460
TEL. 203 876-6815

WILLIAM GITLITZ 1933-1968
STEPHEN E. RONAI
ROBERT L. BERCHEM
HARVEY P. GERMAN
JOHN A. PARESE

NEW HAVEN OFFICE
138 ORANGE STREET
NEW HAVEN, CONN 06510
TEL 203 865-2116

February 7, 1974

John J. Coughlin, Esquire
Bennett, Kapusta & Coughlin
75 Broad Street
Milford, Connecticut

Dear John:

I acknowledge receipt of your February 6, 1974 letter in behalf of Dr. Allen Schlein, M.D.

Enclosed please find a Waiver of the Time Limits which has been executed by myself in behalf of the hospital. Please be good enough to return a fully executed copy to my office.

Since oral argument by the practicioner is a right granted under the By-Laws upon request, Dr. Schlein will have the opportunity to present his oral argument at the hearing. With respect to your additional requests for the right to submit "new material" not presented to the Ad Hoc Committee, together with your request for the personal appearance by a member of your firm, I have transmitted these requests to the Administrator of the hospital for a decision thereon pursuant to Article VIII, Section 6 of the By-Laws. The decision will be rendered at the discretion of the Executive Committee and I will give you prompt notice of the decision with respect to both requests in order that you may have adequate time to prepare for the hearing.

Your cooperation in this matter is appreciated.

Very truly yours,

Stephen E. Ronai

SER/lab
Enclosure

FAIRFIELD COUNTY ORTHOPEDIC ASSOCIATES, P. C.
PRACTICE LIMITED TO ORTHOPEDIC SURGERY
4749 MAIN STREET
BRIDGEPORT, CONNECTICUT 06606
PHONE 372-4331

ALTER T. SHANLEY, M. D.
JOEL H. EISENBERG, M. D.

February 8, 1974

Dr. Robert Kerin
112 Broad Street
Milford, Connecticut

Re: Allen Schlein, M.D.

Dear Dr. Kerin:

Apparently there has been some confusion with regard to my letter which was sent to your Credential Committee regarding Dr. Allen Schlein.

If Dr. Schlein had been in practice on a solo basis I am sure I could not have denied him my recommendation to your staff. I have reviewed his letters of recommendation that were sent to the Credentials Committe at St. Vincent's Hospital. All letters presented Dr. Schlein as a physician in good standing and he was granted Courtesy Privilegs in St. Vincent's Hospital.

I therefore wish to retract my initial letter and recommend Dr. Allen Schlein on this basis.

Sincerely,
Walter T Shanley

WTS/g

WALTER T. SHANLEY, M.D.

Received per Dr Kerin on 2/15/74

THE MILFORD HOSPITAL
2047 BRIDGEPORT AVENUE
MILFORD, CONNECTICUT 06460

February 14, 1974

Allen P. Schlein, M.D.
75 New Haven Avenue
Milford, Conn. 06460

Dear Dr. Schlein:

I have your letter requesting an appellate review by the governing body of our medical staff's recommendation for the denial of your application for appointment to the medical staff. Your February 1, 1974 letter was received on February 5, 1974.

In accordance with the correspondence dated February 6, 1974 and February 7, 1974 between your counsel, John J. Coughlin, Esquire and the hospital's counsel, Stephen E. Ronai, Esquire, please be advised that the date of the appellate review is February 27, 1974 at 2:30 PM in the Auditorium of the Milford Hospital, 2047 Bridgeport Avenue, Milford, Connecticut. The review shall be conducted by the Executive Committee of the Board of Directors as authorized by Article VIII, Section 6(d) of the Medical Staff Bylaws.

Your request for oral argument is granted and pursuant to Article VIII, Section 6(f) you are herewith requested to be personally present for the purposes set forth therein. Furthermore, your counsel's request to be present at the appellate review hearing is granted. Finally, your right to introduce additional material at the appellate review hearing is herewith granted conditioned on that material being reviewed by the committee and adjudged according to its appropriate weight and relevance.

Further communications concerning any additional procedure and further information relating to the preparation for the hearing will be transmitted to you, if necessary in further communications from me.

Very truly yours,

George R. Plaskowitz
Administrator

s

BENNETT, KAPUSTA & COUGHLIN
ATTORNEYS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT 06460
TELEPHONE 874-6773

WILLIAM K. BENNETT
ROBERT KAPUSTA
JOHN J. COUGHLIN
~~LEO D. CARROLL~~
JOHN J. BENNETT

ANSONIA OFFICE
85 MAIN STREET
ANSONIA, CONNECTICUT
TELEPHONE 735-3521

February 18, 1974

Stephen E. Ronai, Esq.
81 Broad Street
Milford, CT 06460

Re: Dr. Allen Schlein/Privileges

Dear Steve:

Enclosed please find the waiver of time limits for an appellate review which has been executed by Dr. Schlein pursuant to your letter of February 7, 1974. On behalf of Dr. Schlein, I acknowledge receipt of the notice of hearing from George R. Plaskowitz, administrator of Milford Hospital, which notice was sent by certified mail and received by Dr. Schlein on February 15, 1974.

In accordance with Article VIII, Section 6 (e) of the By Laws of the Medical Staff of Milford Hospital, Dr. Schlein will submit a written statement and such statement will be filed on or before February 28. As previously indicated that the written statement would be filed on February 20, 1974, however, as Article VIII, Section 6 (e) of the By Laws prescribe a later period, it is our intent to utilize the full 10 day period as set forth in Article VIII, Section 6 (e).

In accordance with Article VIII, Section 6 (e) of the By Laws of the Medical Staff, request is made for access to the reports and records of the Ad Hoc Committee and all other material, favorable or unfavorable, that was considered in making the adverse recommendation against Dr. Schlein by the Medical Staff. This request encompasses minutes of the deliberation of the Ad Hoc Committee and minutes of the original hearing of the Medical Staff which gave an adverse recommendation to Dr. Schlein's application for appointment to the Medical Staff of the Milford Hospital.

In addition to the above, it is requested that the following information and records be made available to this office on behalf of Dr. Schlein:

a. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate that the evaluation by the Chief of Staffs of Dr. Schlein's recent clinical experience at Park City Hospital and St. Vincent's Hospital were essentially negative with respect to his professional reputation and his ability to work with others.

b. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate that the evaluation of Dr. Schlein's professional conduct in current and past hospital associations has developed a substantial record that his behavior in the performance of his professional duties demonstrate a difficulty in working well with patients and members of various medical staffs.

c. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate Dr. Schlein's inability to obtain affirmative recommendation with respect to his professional competence with the chief of orthopedic surgery at two local hospitals; all facts which demonstrate and show that Dr. Schlein had a pattern of abrasive behavior with respect to fellow staff members at other hospitals.

d. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate that there is substantial doubt that Dr. Schlein possesses the demonstrated competence, good reputation, and ability to work with others.

e. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate that Dr. Schlein would be unable to insure a high quality of care to patients that were admitted to Milford Hospital.

f. all facts in possession of the Milford Hospital Medical Staff which show or demonstrate that the approval of Dr. Schlein's application for privileges would not be in the best interest of the health needs of the Milford community.

I would appreciate it if this information was made available on or before Thursday, February 21, 1974, as the written statement, which will be submitted on Dr. Schlein's behalf, must be filed on or before February 26, 1974.

Very truly yours,

JOHN J. COUGHLIN

JJC:ds
enc.
cc: George R. Plaskowitz

GITLITZ, RONAI & BERCHEM
A PROFESSIONAL CORPORATION
COUNSELORS AT LAW
81 BROAD STREET
MILFORD, CONNECTICUT 06460
TEL. 203 878-6515

WILLIAM GITLITZ, 1933-1968
STEPHEN E. RONAI
ROBERT L. BERCHEM
HARVEY P. HERMAN
JOHN A. PARESE

NEW HAVEN OFFICE
138 ORANGE STREET
NEW HAVEN, CONN. 06510
TEL 203 865-216

February 19, 1974

George R. Plaskowitz
Administrator
Milford Hospital, Inc.
2047 Bridgeport Ave.
Milford, Conn. 06460

Dear George:

Enclosed please find the confirmation of the Reporter's assignment for the taking of the verbatim transcript of the hearing.

Also enclosed please find the executed waiver of time limits together with a letter of February 18, 1974. Please call me upon receipt of these letters.

Very truly yours,

Stephen E. Ronai

SER/lab
Enclosures

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138 ORANGE STREET
NEW HAVEN, CONN 06510
TEL 203 865-2116

WAIVER OF TIME LIMITS

I, ALLEN P. SCHLEIN, herewith waive the time limits for an appellate review of my application to the Executive Committee of the Board of Directors of the Milford Hospital, Inc. and herewith consent that February 27, 1974 at 2:30 P.M. in Conference Room 1 of the Milford Hospital, 2047 Bridgeport Avenue, Milford, Connecticut, be designated by mutual agreement for the appellate review.

Allen Schlein
ALLEN P. SCHLEIN, M.D.

Stephen E. Ronai
Stephen E. Ronai, Esquire
Counsel for the Milford Hospital

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TEL. 203 878-8515

WILLIAM GITLITZ, 1933-1968
STEPHEN E. RONAI
ROBERT L. BERCHEM
HARVEY [illegible]
JOHN A. [illegible]

NEW HAVEN OFFICE
138 ORANGE STREET
NEW HAVEN, CONN. 06510
TEL. 203 865-2116

February 20, 1974

John J. Coughlin, Esquire
Bennett, Kapusta & Coughlin
75 Broad Street
Milford, Connecticut 06460

Re: Dr. Allen P. Schlein/Privileges

Dear John:

In accordance with our telephone conversation, it is agreed that you will submit a written statement in support of Dr. Schlein's position and will file said statement on or before 12 o'clock noon on February 26, 1974. It would be appreciated if you could file an original and eight copies of this report with Mr. Plaskowitz, the Hospital Administrator, so that it could be distributed to the members of the Executive Committee for their study and familiarity before the hearing.

In accordance with Article VIII, 6(e), I herewith enclose copies of all reports, records of the Ad Hoc Committee and all other material, favorable or unfavorable, that was considered in making the adverse recommendation of the medical staff against him. An outline of the entire record to date is appended to this letter as an exhibit. This submission would provide you with sufficient information to apprise you and your client of the specific claims and the basis or the reasons for the denial and should provide you with adequate opportunity to prepare your case for the February 27, 1974 hearing at 2:30 P.M.

Very truly yours,

Stephen E. Ronai

SER/lab
Enclosures

cc: George R. Plaskowitz, Administrator
Earl E. Van Derwerker, Jr., M.D.

Mayo Clinic

Rochester, Minnesota 55901
Telephone 507 282-2511

Mark B. Coventry, M.D.
Orthopedic Surgery
Adult Reconstruction

(Received 2/25/74)

February 21, 1974

Mr. George R. Plaskowitz
Administrator
The Milford Hospital
2047 Bridgeport Avenue
Milford, Connecticut 06460

Dear Mr. Plaskowitz:

Attorney Coughlin has called me regarding Dr. Allen Schlein's position regarding staff appointment at the Milford Hospital.

I have reviewed my letter to you of October 10, 1973. As I mentioned in this letter and will reiterate, we believe he is a man of good morals and that he had an honest character. I have no question at all about his basic abilities as an orthopedic surgeon, but I know nothing about his performance since he left Mayo, now almost four years ago. I have discussed this whole problem thoroughly, including this letter, with Dr. Patrick Kelly, who is Chairman of our Education Committee and was more intimately involved with Doctor Schlein's training than I, and he agrees completely with my letter to you, including my recommendation for staff appointment.

Sincerely,

Mark B. Coventry

Mark B. Coventry, M.D.
Head
Department of Orthopedics

MBC:ds
cc: John Coughlin
75 Broad Street
Milford, Connecticut

In re: Allen P. Schlein, MD
Application for Privileges
Milford Hospital

Milford, Connecticut
February 26, 1974

WRITTEN STATEMENT OF APPLICANT

A. History of Application

The applicant, Allen P. Schlein, MD., applied to Milford Hospital for privileges on or about June 7, 1973. The application was considered by the Credentials Committee of Milford Hospital on August 23, 1973, at which time said committee deferred action on the application pending further information. On September 13, 1973, the Credentials Committee voted to grant Dr. Allen P. Schlein provisional privileges in orthopedic surgery at Milford Hospital. Thereafter, the Executive Committee of the Milford Hospital Staff met on September 25, 1973, and approved the application of Dr. Schlein for privileges. Thereafter, the Credentials Committee met on October 3, 1973, and reconsidered the granting of privileges to Dr. Schlein and revoked their previous approval. The next day, October 4, 1973, the revised recommendation of the Credentials Committee of October 3, 1973, to deny privileges to Dr. Schlein was rejected by the Executive Committee and said Executive Committee voted that Dr. Allen P. Schlein be granted privileges in orthopedics at Milford Hospital. Thereafter, on October 5, 1973, at a meeting of the Medical Staff of Milford Hospital, it was voted not to approve Dr. Schlein's application. On November 23, 1973, Dr. Schlein met with Drs. Coassin, Coppes, Wolfson, Kerin, Fink and Lipkoff in regards to his application and explained the letter of Dr. Camarda. On December 6, 1973, the Credentials Committee again voted not to recommend the application of Dr. Schlein for privileges and finally, on December 7, 1973, the Medical Staff voted to accept the recommendation of the Credentials Committee denying Dr. Schlein privileges. Dr. Schlein was notified by letter dated December 7, 1973, of the denial of his application for privileges.

Pursuant to Article VIII, Section 1, of the By Laws of the Medical Staff of Milford Hospital, Dr. Allen P. Schlein requested a hearing before an Ad Hoc Committee. A hearing was held on Thursday, January 3, 1974, by the Ad Hoc Committee of the Medical Staff of Milford Hospital. By letter dated January 23, 1974, George Plaskowitz, Administrator at Milford Hospital, notified Dr. Schlein pursuant to Article VIII, Section 5, of the By Laws, Rules and Regulations of the Medical Staff of Milford Hospital, that the Ad Hoc Committee, after due deliberation and review of the transcript, recommended to the Medical Staff that his application for appointment to the Medical Staff be denied. The report of the Ad Hoc Committee was accepted by the Medical Staff on January 22, 1974. Pursuant to Article VIII, Section 6, of the By Laws of the Medical Staff of Milford Hospital, Dr. Schlein requested appellate review of the denial of his application for privileges.

B. Qualifications of Applicant

The following credentials of Dr. Allen P. Schlein, demonstrate that he is a professionally competent practioner who meets the qualifications, standards, and requirements as set forth in the By Laws of the Medical Staff of Milford Hospital.

1. Background and Experience

EDUCATION:	PRE-MEDICAL: STEVENS INSTITUTE OF TECHNOLOGY, HOBOKEN, NEW JERSEY B.S. 1961 MEDICAL: JEFFERSON MEDICAL COLLEGE PHILADELPHIA, PA. M.D. 1965
INTERNSHIP:	PHILADELPHIA GENERAL HOSPITAL JUNE 1965 - JUNE 1966
RESIDENCY:	ORTHOPAEDIC SURGERY, MAYO FOUNDATIO ROCHESTER, MINNESOTA JULY 1966 - JULY 1970
CERTIFICATION:	AMERICAN BOARD OF ORTHOPAEDIC SURGERY, SEPTEMBER 22, 1972
LICENSURES:	ILLINOIS, JULY 1970, LICENSE #36-434 MINNESOTA, LICENSE #17870 CALIFORNIA, LICENSE #618255 CONNECTICUT, LICENSE #15621
SPECIALTY AND PRACTICE:	ORTHOPAEDIC SURGERY
HOSPITAL STAFF:	LOUIS A. WEISS MEMORIAL HOSPITAL, CHICAGO, ILLINOIS PARK CITY HOSPITAL, BRIDGEPORT, CON BRIDGEPORT HOSPITAL, BRIDGEPORT, CO SAINT VINCENT'S HOSPITAL, BRIDGEPORT CONN.
MILITARY SERVICE:	CAPTAIN, U. S. ARMY RESERVE
TEACHING:	CLINICAL ASSOCIATE, UNIVERSITY OF ILLINOIS, TWO YEARS
MEMBERSHIPS IN MEDICAL SOCIETIES:	AMERICAN MEDICAL ASSOCIATION THE CONNECTICUT MEDICAL ASSOCIATIO CHICAGO MEDICAL SOCIETY ILLINOIS STATE MEDICAL SOCIETY AMERICAN ASSOCIATION OF AUTOMOTIVE MEDICINE

The foregoing educational, internship, residency, licensures, hospital staff, memberships, etc., amply demonstrate that the applicant, Allen P. Schlein, has the training and demonstrated competence to insure that any patient treated by him at Milford

Hospital will be given a high quality of medical care and is qualified for membership on the Medical Staff of Milford Hospital.

2. Publications

In addition to the above, Dr. Allen P. Schlein has published the following articles:

A-C Separations, Fracture Conf., Minnesota Medicine, Vol. 51, pp. 663-670, May, 1968

The Intoxicated Motor Vehicle Operator, Chapter in Symposium of Int. Cong. of Automotive and Traffic Safety, June 4, 1969

Performance of a Vitallium Olecranon Prosthesis; Case Report with 13 Year Follow-up, Journal of Bone and Joint Surgery, Vol. 52-A, No. 4, pp. 721-724

Modified Robert Jones Dressing, Proceedings of Mayo Clinic, August 1970

Book Review

Clinical Treatment of Back and Neck Pain, by Hans Kraus, M.D., McGraw Hill, 1970, 156 pages

The Dual Mallet Finger. The British Society for Surgery of the Hand. Hutton, Essex, England

The Dual Finger Dislocation. British Society for Surgery of the Hand. Hutton, Essex, England

Fracture Conference, Birth Fractures, Minnesota Medicine, Vol. 55, pp. 471-474, May, 1972.

3. Instructional Experience

The applicant further has participated in instructional courses and meetings:

Annual meetings of the American Academy of Orthopaedic Surgeons

Chicago Orthopaedic Society Meetings, every six weeks

Therapeutic Sub-Task Force Group Meetings, Department of Pharmacology, The Abraham Lincoln School of Medicine a Instructional courses offered by the American Academy of Orthopaedic Surgeons

1) The Committee on Injuries: Difficult Reconstructive Problems of the Upper Limb, May 6 through 8, 1971, Nashville, Tennessee

2) The Committee on Arthritis: Reconstructive Surgery of the Arthritic Patient, May 12 through 14, 1971-Philadelphia, Pa.

b Society of Military Orthopaedic Surgeons, Bethesda Naval Hospital, Maryland, 1969

c Society of Military Orthopaedic Surgeons, Travis Air Force Base, Calif., 1971

d Armed Forces Institute of Pathology, Washington, D.C., February, 1972. Orthopaedic Pathology for Pathologists

e Howmedic Symposium on Joint Arthroplasty in Conjunction with the American Academy of Orthopaedic Surgeons in Dallas, Texas, January 16, 1974

4. Research

Dr. Schlein has been actively involved in medical research and has:

a. designed a total elbow under Federal Drug Administration consideration (see attached copy of brochure);

b. designed total ankle presently under Federal Drug Administration consideration;

c. involved in current research to improve technique of insertion of acetabular preparation of total hip arthroplasty;

d. improved and simplified a halodevice for use in cervical spinal injuries;

e. development of a practical battery operated Kirshner wire inserter

C. Objection to Procedure

Article VIII, Section 6(e), of the By Laws of the Medical Staff of the Milford Hospital provides that the written statement of the applicant shall contain the objections of the applicant to the factual and procedural matters with which he disagrees and the reasons for the disagreements.

1. The applicant disagrees with the denial of his right to counsel at the time of the Ad Hoc Committee. The denial of Dr. Schlein's privileges by the Medical Staff on December 7, 1973, was a denial of his right to practice his profession of orthopedic surgery in the City of Milford and further, was a direct reflection on his competency and/or professional conduct. Such a serious matter requires the guidance of an attorney to insure that heresay or opinion evidence without a factual basis was not submitted and relied on as the sole basis for the decision of the medical staff.

2. The Ad Hoc Committee, or the Medical Staff, failed to call one witness to testify but relied on heresay and opinion evidence. Dr. Schlein was denied the right to be confronted with witnesses, thus denying him the right to cross examine as provided in Article VIII, Section 5(i), of the By Laws. The applicant could not cross examine the letters or the oral reports of the Medical Staff representative.

3. In conjunction with the failure to comply with Article VIII, Section 5(i), there was a total absence of any factual presentation as to the applicant's competence, ability to work with others, moral character, or professional reputation, to support the decision of the Medical Staff.

4. Procedurally, when Dr. Schlein requested a statement in concise language, the acts with which he was charged and/or the

other reasons that was considered in making the adverse recommendation or decision by the Medical Staff, he was not informed in concise language or provided the exact particulars relied upon by the Medical Staff in the denial of his appliciation and thus he was unable at the time of the Ad Hoc Committee hearing to rebutt, challenge or present witnesses as provided in Article VIII, Section 5(1), in his defense. At the time of the hearing, Dr. Schlein was first appraised of the information relied upon.

5. It is evident from a reading of the reports and record that was considered in making the adverse recommendation and decision denying him privileges, that guilt by association was one basis for the denial of his application. The record and reports made available on February 20, 1974, to counsel for Dr. Schlein, is replete with innuendos and criticism solely because of the applicant's connection with Dr. William Lewis.

D. Factual Disagreement

The Medical Staff's recommendation to the Board of Directors was based upon four reasons:

a. The evaluation of Dr. Schlein's clinical experience received from the Chiefs of Orthopedic Surgery at Park City Hospital and St. Vincent's Hospital were essentially negative with respect to his professional reputation and ability to work with others. One letter was from Dr. Walter Shanley, dated November 29, 1973. The letter from Dr. Shanley lacks a factual basis and is strictly a matter of opinion. By letter dated February [illegible], 1974, Dr. Shanley retracted his initial letter stating that if

Dr. Schlein had been in sole practice, he would not have denied him recommendation to the to the staff of Milford Hospital. The retraction of Dr. Shanley further states that Dr. Schlein, when applying for credentials at St. Vincent's was a physician in good standing and now recommended him for privileges at Milford Hospital. A copy of said letter of retraction is attached hereto.

The second letter by Dr. Camarda from Park City Hospital did not reflect on Dr. Schlein's competence but only his ability to work well with others. However, the record will reflect that there is one isolated incident and also a personal relationship involved. To rebut this letter, reference is made to the letter of Pauline N. Spelke, administrator at Park City Hospital, which states,

> "Dr. Schlein is considered eminently qualified as an orthopedic surgeon. -----he has performed conscientiously and capably, and we consider him a responsbile member of our medical staff.
>
> We recommend that he receive privileges at Milford Hospital."

Additionally, Peter E. Hope-Ross, MD., Chief of the Medical Staff of Park City Hospital writes, "Dr. Schlein has been a member of our medical staff since July, 1972. I am not aware of any complaints against him on this basis during this period. In my own dealings with him, I found him honest, helpful, straightforward and courteous."

Also a letter from William A. Hoffman, MD., Chairman, Department of Medicine at Park City Hospital, which reads:

> "I have known Dr. Schlein since he has been in the Bridgeport area, approximately 18 months. During this time, my contact with him has been virtually day-to-day in seeing patients at Park City Hospital. I do not think I could evaluate his technique in the operating room but I know that his evaluation with patients pre-operatively has always appeared careful and diligent and he has been extremely conscientious in his post-operative care. He has operated on many of my patients and I have nothing but praise from these people as to his professional ability.
>
> During this time, I have also been a member of the Medical Executive Committee at Park City Hospital, in my position as Chief of Medicine. During all the meetings that I attend I have never heard a word of criticism expressed against Dr. Schlein by the numerous standing hospital committees (e.g. tissue, infection, etc.) or by the members of the surgical service. To my knowledge he has practiced his speciality of orthopedic surgery with care, diligence and with the upmost ethical considerations. I would recommend Dr. Schlein highly for any hospital staff appointment."

Dr. Walter S. Wiggins, MD., Director of Professional Services, Park City Hospital, states that in regard to the applicatio of Dr. Allen P. Schlein, "I am prepared to inform you that all that I have seen and heard of Dr. Schlein's professional work, ethical conduct, has been worth of commendation.

It is evident that the first reason for the denial of Dr. Schlein's application is without substance and cannot be supported from the record. The recommendations from the Chief of Staff, Chairman, Department of Medicine, the Director of Professional Services, and the Administrator, Park City Hospital, clearly outweight any negative responses by Dr. Camarda, who has a personal disagreement with Dr. Schlein regarding a business arrangement as more particularly set forth in the record and the minutes of the meeting between Dr. Schlein and the Credentials Committee.

The second reason stated for the denial of privileges was that the evaluation of his professional conduct in current and past hospital associations has developed a substantial record that his behavior in the performance of his duties demonstrated a difficulty in working well with patients as well as with others members of various medical staffs. Specific reference is made to the letter of Robert D. Ray, MD., head of the Department of Orthopedic Surgery, the University of Illinois College of Medicine, wherein he stated that Dr. Schlein redesigned a prosthesis and returned to the hospital, located a patient, and reoperated on her elbow. Dr. Ray later states Dr. Schlein was "conscientious and had great concern for his patient" and further that he was "clinically competent, had originality and his moral standards were above reproach." Irwin Seigel, MD., of the Strauss Medical Group, writes by letter dated February 21, 1974, that Dr. Schlein is considered a competent orthopedic physician and the records at Strauss Surgical Group do not reveal any written complaints of incompetency, any written complaints by fellow staff members, doctors or nurses, and any written complaints by patients concerning his treatment of them.

Martin W. Zimmerman, Executive Director of the Weiss Memorial Hospital, wrote by letter dated November 14, 1973, that the records of the hospital showed that Dr. Schlein was a member in good standing at the hospital and carried out his responsibilities both to the medical staff and to the hospital and further, that he had excellent training, and his ethical and professional standards were considered satisfactory.

The letters of Mrs. Spelke, Administrator, Park City Hospital, Peter E. Hope-Ross, MD., Chief of Staff, Park City Hospital, Walter S. Wiggins, MD., Director of Professional Services, Park City Hospital, Willaim A. Hoffman, Chairman of Medicine, Park City Hospital, demonstrate an absence of any complaints by patients or fellow staff members at Park City Hospital.

The second reason for the denial of his privileges is unsupported by the record and likewise, without substance. The letter from Dr. Seigel of Strauss Surgical Group states that Dr. Schlein's record has no such complaints; the Executive Director of Weiss Memorial Hospital where Dr. Schlein practiced while at the Strauss Group indicates that Dr. Schlein was a member in good standing and further, the letters from Park City Hospital referred to above, are contrary to the allegations and rebutts any such charge that his evaluation of professional conduct in current and past hospitals demonstrate a difficulty in working well with patients as well as members of the medical staffs. It is clear that the contrary is demonstrated, that is, that Dr. Schlein was a member in good standing and carried out his responsibilities both to the medical staff, patients, and that his ethical and professional standards were considered high.

The remaining two reasons for the denial of Dr. Schlein's privileges as set forth in the letter from George R. Plaskowitz dated February 28, 1973, restate the first two reasons discussed above and conclude that substantial doubts were raised that he possessed the demonstrated competence, good reputation, and ability to work with others and that approval of his application would not be in the best interests of the health needs of the Milford community or insure a high quality of care to patients at Milford Hospital. The rebuttal contained in the statement in regards to the first two reasons are hereby set forth as rebuttal to the third and forth reasons for the denial of his application. In particular, Dr. Schlein sets forth affirmatively the following letters which will be attached:

a. letter of Dr. Ray, University of Illinois School of Medicine;

b. letter of Walter Shanley, MD., dated February 8, 1974;

c. letter of Mark B. Coventry, MD., of Mayo Clinic dated February 21, 1974;

d. letter of Mark W. Zimmerman, Executive Director of Weiss Memorial Hospital;

e. letter of Mrs. Spelke, Administrator, Park City Hospital;

f. letter of Peter E. Hope-Ross, MD., Chief of Staff, Park City Hospital;

g. Walter S. Wiggins, MD., Director of Professional Services, Park City Hospital;

h. letter of William A. Hoffman, Chairman of Medicine, Park City Hospital;

i. letter of Irwin M. Seigel, MD., dated February 21, 1974;

j. report of L. M. Rappoport, MD., dated October 11, 1973, concerning a conversation with Dr. Nathan Friedman.

The above referred to letters and the credentials set forth previously demonstrate that the allegations contained in the letter of George Plaskowitz, dated December 28, 1973, are without substance or merit. Dr. Schlein further objects to the Medical Staff of Milford Hospital failing to accept his certification by the American Academy of Orthopedic Surgeons and his licensing to practice orthopedic surgery by the states of Connecticut, Minnesota, Illinois, New York and California as evidence of his competency and good professional standing. Further, Dr. Schlein objects to the Medical Staff and the Ad Hoc Committee accepting and relying exclusively on heresay evidence, opinion evidence, all without a factual basis and predicating their decision on said evidence which amounts to basing a decision on conjecture and speculation and thus a denial of due process.

Wherefore, the applicant moves that the Appellate Review Board reverse the decision of the Ad Hoc Committee and grant his application for privileges forth with.

Respectfully submitted,

ALLEN P. SCHLEIN, M.D.

By Bennett, Kapusta & Coughlin

John J. Coughlin, for the firm

LIST OF ATTACHMENTS TO BRIEF

Robert D. Ray, M.D., Ph.D. Head of the Department of Orthopaedic Surgery	Letter dated September 7, 1973
Report of L. M. Rapoport, M.D. with Dr. Nathan Friedman dated October 11, 1973	
Mortimer W. Zimmerman, Executive Director Weiss Hospital	Letter dated 11/14/73
Walter T. Shanley, M.D. Fairfield County Orthopedic Associates	Letter dated 2/ 8/74
Peter E. Hope-Ross, M.D. Chief of the Medical Staff Park City Hospital	Letter dated 12/19/73
Walter S. Wiggins, M.D. Director, Professional Services Park City Hospital	Letter dated 12/19/73
William A. Hoffman, M.D. Chairman, Department of Medicine Park City Hospital	Letter dated 12/22/73
(Mrs.) Pauline N. Spelke Administrator Park City Hospital	Letter dated 12/31/73
Irwin M. Siegel, M.D. Strauss Surgical Group Assoc.,S.C.	Letter dated 2/21/74
Mark B. Coventry, M.D. Head Department of Orthopedics Mayo Clinic	Letter dated 2/21/74
Copies of licenses and certifications	
Brochure from Howmedica regarding Vitalium Schlein Total Elbow Prosthesis	

ALLEN P SCHLEIN
295 BOOTH ST
STRTFRD CT 06497

ISSUED BY
BD OF MEDICAL EXAMINERS
496 LOWRY MED ARTS BLDG
ST PAUL MN 55102 296-6501

ISSUED 3-08-73 EXPIRES 12-31-73

SIGNATURE Allen Schlein

THIS IS YOUR WALLET CARD

STATE OF ILLINOIS RICHARD B. OGILVIE, GOVERNOR
DEPARTMENT OF REGISTRATION AND EDUCATION, SPRINGFIELD

EXPIRES 7-01-74 SIGN:

LICENSED PHYSICIAN AND SURGEON

ALLEN P. SCHLEIN, MD
2043 N. MOHAWK ST.
CHICAGO, ILL 60614

CERTIFICATE NO
36- 43489

ATTEST.
ASSISTANT DIRECTOR

DIRECTOR

585212

MUST BE SIGNED IN

RONALD REAGAN
GOVERNOR

1972

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
Board of Medical Examiners

D. G. LIVINGSTON
DIRECTOR

1973

THIS IS TO CERTIFY THE UNDERNOTED HAS PAID THE BIENNIAL RENEWAL FEE IMPOSED BY DIVISION II CHAPTER 5 ARTICLE 15 OF THE BUSINESS AND PROFESSIONS CODE AND IS ENTITLED TO PRACTICE AS A

PHYSICIAN and SURGEON

AS PRESCRIBED ON THE CERTIFICATE LAST ISSUED

012995

CERTIFICATE NO.
G 18255

SCHLEIN ALLEN PHILIP
4640 MARINE DR
CHICAGO IL 60640

07R-4 (3/71)

VOID AFTER FEBRUARY 28 1974

Allen Schlein
SIGNATURE OF LICENSEE

American Board of Orthopaedic Surgery

INCORPORATED 1934

HEREBY CERTIFIES THAT

ALLEN P. SCHLEIN, M.D.

HAS MET THE REQUIREMENTS OF THIS BOARD AND IS HEREBY QUALIFIED

TO PRACTICE THE SPECIALTY OF

ORTHOPAEDIC SURGERY

SEPTEMBER 22, 1972

Paul R. Lipscomb
PRESIDENT

Sherman S. Coleman
VICE PRESIDENT

Crawford J. Campbell

Michael Bonfiglio M.D.

Albert B. Ferguson Jr

Alvin J. Ingram M.D.

Wood W. Lovell
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John C. Wilson Jr

ΟΡΘΟΣ ΠΑΙΣ

MCMXXXIV

AMERICAN BOARD OF MEDICAL SPECIALTIES

Mayo Graduate School of Medicine

of Mayo Foundation
and University of Minnesota
Rochester, Minnesota

Certifies That

ALLEN PHILIP SCHLEIN, M.D.

completed

FORTY-EIGHT MONTHS

as a Resident in

ORTHOPEDIC SURGERY

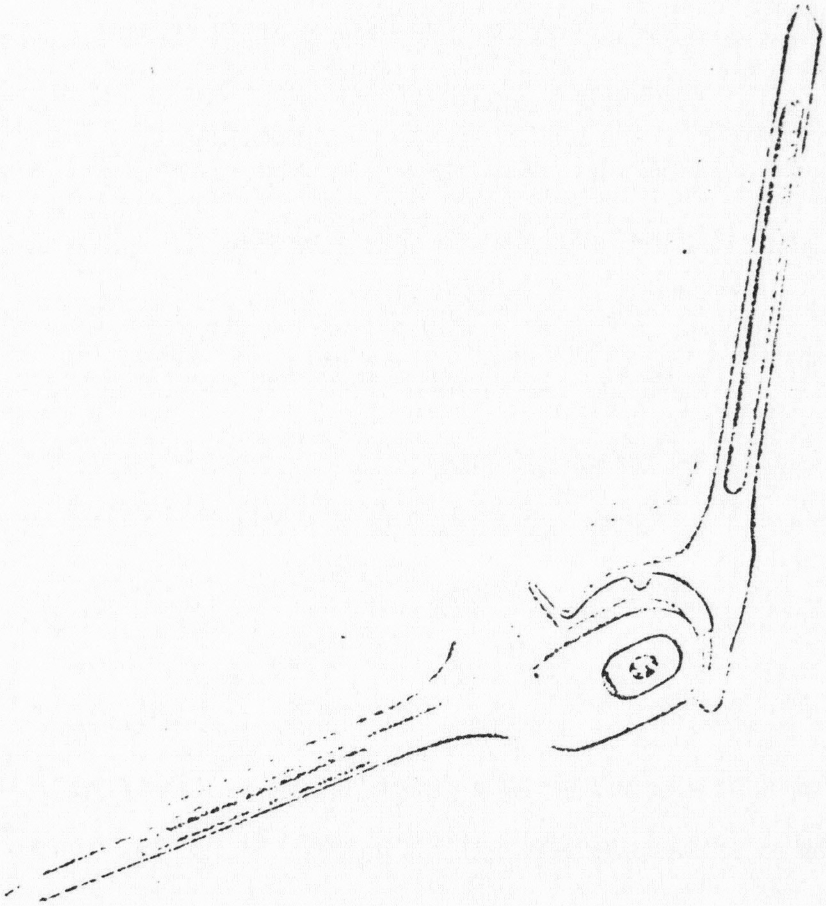
at the Mayo Clinic

JUNE THIRTIETH, NINETEEN HUNDRED AND SEVENTY.

Raymond D. Pruitt
Mayo Foundation

Mark B. Coventry
Mayo Graduate School

New Two Piece Elbow



Vitallium® Schlein Total Elbow Prosthesis

- ☐ Ultra high molecular weight polyethylene bearing surfaces
- ☐ Ulna stem reversible to fit either elbow
- ☐ Minimal bone removal, easy insertion
- ☐ Positive fixation with Surgical Simplex® P Bone Cement

Howmedica

STRAUSS SURGICAL GROUP ASSOC., S.C.
4640 MARINE DRIVE • CHICAGO, ILLINOIS 60640 • [illegible]

GENERAL SURGERY
SIEGFRIED F. STRAUSS, M.D.
ARTHUR H. SCHWARTZ, M.D.
DAVID D. FRAM, M.D.
W. J. TANNENBAUM, M.D.
JEROME M. SILVER, M.D.
RICHARD L. BIGG, M.D.
MICHAEL A. FRIEDBERG, M.D.

GYNECOLOGY AND OBSTETRICS
HERMAN A. STRAUSS, M.D.
LAWRENCE I. BERNARD, M.D.
CARL JAROLIM, M.D.
STEPHEN B. RUSKIN, M.D.

UROLOGY
HERBERT SOHN, M.D.
RAYMOND FIRLER, M.D.
BRUCE M. BERKSON, M.D.

ORTHOPAEDIC SURGERY
IRWIN M. SIEGEL, M.D.
L. K. TOPOUZIAN, M.D.

THORACIC AND VASCULAR SURGERY
DOUGLAS R. NORMAN, M.D.

ANESTHESIOLOGY
W. C. LIU, M.D.

EMERITUS
H. LEOPOLD BRODNY, M.D.

February 21, 1974

Mr. John J. Coughlin
Attorney at Law
75 Broad Street
Milford, Connecticut 06460

Dear Mr. Coughlin,

I am writing in reply to your letter of February 18th requesting clarification of my correspondence with the Chairman of the Credentials Committee at the Milford Hospital, Milford, Connecticut concerning the application of Dr. Allen P. Schlein for privileges at that institution.

You asked several specific questions, and I'll answer as best I can.

First, you wanted to know if Dr. Schlein would be considered generally a competent orthopedic physician. As I recall, my letter of December 3rd stated, "......he was able to handle common orthopedic problems with some competence...", and I would have to answer that he would be considered generally a competent orthopedic physician.

You also asked if Dr. Schlein's employment records at the Strauss Surgical Group Associates revealed any written complaints of medical incompetency; any written complaints by fellow staff members, doctors, or nurses; and any written complaints by patients concerning his treatment of them. No such complaints are on file in Dr. Schlein's employment record.

I trust this is the information you desire.

Yours sincerely,

IRWIN M. SIEGEL, M.D.

IMS:AT

MINUTES OF THE APPELLATE REVIEW

OF THE APPLICATION OF DR. ALLEN P. SCHLEIN

A special meeting of the Appellate Review Committee of the Board of Directors was held on March 20, 1974. The following members of the Committee were present: Daniel A. Johnson, Chairman, Robert D. Beard, James Edwards, Howard D. Fink, M.D., John D. Greco, George R. Plaskowitz, Joseph Roberts, Stephen P. Chernock, Sr., Charles E. Sorensen, Albert P. Stowe, Jr., Fred B. Warren, C. J. Lipkoff, M.D., Earl VanDerwerker, Jr., M.D. and Stephen E. Ronai, Esquire, Counsel.

The purpose of the meeting was to review the transcript of the verbatim proceedings of the Appellate Review hearing conducted on February 27, 1974, with respect to the application of Dr. Allen P. Schlein for privileges. All members of the Committee acknowledged that they had received and read the transcript of the hearing. The Chairman of the Executive Committee, Daniel A. Johnson, then asked Mr. Ronai as counsel for a recommendation concerning the appropriate legal course of action. Mr. Ronai pointed out that any action of the Committee as an Appellate Review body must be taken within fourteen days of the date of the receipt of the transcript of the proceedings or fourteen days from Monday, March 18, 1974, as a result of the stipulation extending the time for completing the proceedings.

The Committee, it was pointed out, had four options pursuant to Article VIII, Section 6 (i) of the Bylaws. The Committee could affirm the Staff's negative recommendation, or it could modify or could refer the matter to the Joint Conference Committee. However, a fourth option empowers the Appellate Review Committee to refer the matter back to the Medical Staff for further review and reconsideration. Mr. Ronai recommended that the state of the evidence which formed the basis of the Medical Staff's recommendation to deny privileges had changed significantly as a result of the withdrawal by Dr. Walter Shanley of his negative letter of November 29, 1973 and by Dr. Shanley's substitution of a subsequent letter dated February 8, 1974. (See transcript, pp. 17). There was general consensus during the discussion that ensued, that the withdrawal of Dr. Shanley's original letter by his February 8, 1974 letter changes substantially the quality and quantity of the evidence upon which the Staff's previous recommendation was founded.

Additionally, it was pointed out that additional favorable information was received by by the Appellate Review Committee at the February 27, 1974 hearing. Accordingly, it was moved by John D. Greco and seconded by Stephen P. Chernock, Sr., and unanimously resolved:

> "That the adverse recommendation of the Medical Staff with respect to the application of Dr. Allan P. Schlein for privileges at the Milford Hospital be referred back to the Medical Staff for further reconsideration, review and further recommendation, said recommendation to be made to the Appellate Review Committee within twenty-one days of the date of the receipt of this report of referral."

It was pointed out as a means of clarifying the resolution that no particular procedural requirement for further hearing or proceedings by the Medical Staff is being imposed by the Appellate Review Committee on the Staff. Further proceedings with respect to the application concerning the investigation of Dr. Shanley's subsequent letter, or the examination or acquisition of additional evidence is being left entirely to the discretion of the staff.

Accordingly, the Appellate Review hearing was deemed continued as an uncompleted hearing until the receipt by the Appellate Review Committee of the report and recommendation of the Medical Staff pursuant to Article VIII, Section 6 (i) of the Bylaws, Rules and Regulations of the Medical Staff.

Respectfully submitted,

Daniel A. Johnson
Chairman

s

ROBERT A. WESTON, JR., M. D.
114 BROAD STREET
MILFORD, CONN. 06460

TELEPHONE 874-3334

Report of Ad Hoc Commitee

A meeting of the ad hoc committee convened at 5 P.M. 4/2/74. Present were Dr. Barney, Dr. Scully, Dr. Corsaro, Dr. Naiman & Dr. Weston. The members reviewed the Appellate Hearingof the Executive Committee of the Milford Hospital Board of Directors and the previous Ad Hoc Committee Hearing re: Dr. Allen Philip Schlein

The principal point of issue, new information, seemed to revolve around a letter by Dr. Shanley retracting his original letter about Dr. Schlein. Dr. Schlein admitted that pressure was brought to Bear on Dr Shanley through Dr. Parker, chairman of the Board of Censors, Fairfield County Medical Society. His attorney, John Coughlin stated he "asked him (Dr. Shanley) to retract it" and if not we would have pursued a litigation.

The balance of new information is such that the committee does not change its opinion about not recommending Dr. Allen Philip Schlein for appointment to the Milford Hospital Medical Staff

Respectfully submitted
Robert A. Weston
Robert A. Weston, Jr. M.D.
Chairman Ad Hoc Committee

A Special Meeting of the Staff of Milford Hospital was called to order by Dr. C. J. Lipkoff at 8:10 AM on April 15, 1974. Those present were Doctors Barney, Baron, Bayless, Brandt, Buckley, Buckman, Chiappinelli, Coassin, Coppes, Corsaro, Fanslow, Fink, Fox, Keegan, Kerin, Lipkoff, Martin, Meia, Messore, Naiman, Pantelick, Parrella, Rapoport, Stein, Thompson, Weston, Wolfson. and Brand.

Dr. Lipkoff reviewed the past history of the application of Dr. Allan P. Schlein to date. He also informed the Staff that Dr. Schlein had been appointed Chief of Orthopedics at Park City Hospital.

Dr. Kerin spoke and reviewed certain pertinent factors of the transcript of the Ad Hoc Committee meeting report. Discussion from the floor was welcomed and comments were made relative to this applicant's acceptability.

It was then moved to accept the recommendations of the Ad Hoc Committee relative to a Denial of Privileges to the applicant. The Motion was amended to include a closed ballot. The balloting was performed, and the Secretary counted the ballots which were

19 Aye
8 Nay
1 Questionable.

The meeting was adjourned at 9:00 AM.

Respectfully submitted,

Leonard M. Rapoport

Leonard M. Rapoport, M.D.
Secretary

LMR/has

Dictated and Transcribed 4/15/74

EXCERPTS OF AD HOC COMMITTEE MEETING OF THE MILFORD HOSPITAL MEDICAL STAFF

January 3, 1974

At pages 28 - 30:

.....

DOCTOR SCHLEIN: He said, as far as I can see, that I have no problems except for the one statement that is made, and I agree with you it is inconsistent. I don't know what it means.

I would just like to pass on the letter as saying that he recommends me. He says, "I can recommend him to you for your staff." I would prefer to discuss things where you say people have not recommended me for your staff.

DOCTOR NAIMAN: Rather than going from letter to letter and scoring positive, negative or ambiguous, as professional people couldn't we attempt to develop the picture in toto, what you feel it is in toto, rather than make a record here of one by one?

DOCTOR SCHLEIN: I will try. You asked me a question. I honestly don't know the answer. As I said, I have spoken to him for three minutes at the Academy meeting last year. I have not seen him for two years prior to that. I have no idea what he is saying in that statement, sir.

DOCTOR CORSARO: Thank you.

DOCTOR KERIN: Doctor Weston, do you want copies of what people have written us to leave with Doctor Schlein and Doctor Lewis? Is that the intent of --

CHAIRMAN WESTON: I think eventually they will receive a copy of every letter that is read in the record.

DOCTOR SCHLEIN: It would make it much easier all around.

DOCTOR KERIN: Whatever you wish.

CHAIRMAN WESTON: It was not my specific intention to do that.

DOCTOR SCHLEIN: But I was going to request them, and I thank you very much.

CHAIRMAN WESTON: All right.

DOCTOR KERIN: I will have to point out that when a letter is requested on an applicant, I think it is not given with the intention that a copy will be sent to the applicant.

DOCTOR CORSARO: I would agree with that.

CHAIRMAN WESTON: I think that point is well taken.

DOCTOR GRUSKAY: If this is going into a record which is available, then this record is available and the letter is available.

DOCTOR KERIN: Then that's where it belongs, in the record. I don't think it belongs in someone's brochure or dossier.

DOCTOR SCULLY: It is available to you from the reporter's transcript here.

DOCTOR SCHLEIN: Very fine.

If you want it back, you may have it, Doctor Kerin.

(Letter returned to Doctor Kerin.)

DOCTOR KERIN: I gather you would like to hear what was written about you?

DOCTOR SCHLEIN: Yes, please.

DOCTOR KERIN: We had hoped that we could keep this on a general basis.

DOCTOR SCHLEIN: No, I would like to put it on a specific basis.

At pages 40 and 41:

.....

DOCTOR SCHLEIN: I will discuss Doctor Shanley's letter. This is definitely a negative letter.

There is not a single specific reason given in the entire letter. Also, Doctor Shanley's knowledge of my activities would have to be, indeed, extremely limited for one reason: I spent a very pleasant half hour in Doctor McCreery's company. When I was given courtesy privileges at St. Vincent's Hospital, I was not requested to have an interview with the Chief of Service. I was introduced to him after I was in town for a period of one month. I shook hands with him, I acknowledged the introduction, and that is the only time I have ever had any personal contact with Doctor Walter Shanley.

CHAIRMAN WESTON: Do you do any work in St. Vincent's Hospital?

DOCTOR SCHLEIN: Some, but it is limited, perhaps three to four cases every six months, but is extremely limited.

DOCTOR NAIMAN: Is it Doctor Shanley's responsibility to observe your performance in these cases?

DOCTOR SCHLEIN: To my knowledge, it may well be. I am a Board certified orthopedic surgeon.

DOCTOR NAIMAN: Does he, as Chairman of his department, have the responsibility of maintaining quality of care in his department?

DOCTOR SCHLEIN: I have no idea. I have never seen the man except for one solitary instance.

DOCTOR SCHLEIN: Well, I would tend to doubt it. I have not been there since I left Doctor Camarda's employ more than two or three times.

I think that since I left Doctor Camarda's employ, I have admitted on my own behalf only one single patient to St. Vincent's Hospital, and this patient was injured in a motorcycle accident and I was the orthopedic physician. I had treated his brother, and a general surgeon took care of him -- rather a general practitioner took care of him, and because the family asked for me, I came up and admitted him on the service. No operative treatment was performed on him. He had an AC separation, concussion, he was unconscious, and had a few other injuries.

So Doctor Shanley, since I have left Doctor Camarda's employ, could never have seen me operate, period. I have never seen him, never talked to him.

There are no specific grievances in here, no specific acts, no specific anything in this letter.

I agree with you that it is definitely a negative letter.

At pages 47-49:

..... DOCTOR SCHLEIN: Doctor Topouzian rather than Doctor Siegel.

I was left with Doctor Topouzian for a year, and then Doctor Siegel came back. At that time, I was very unhappy with their treatment of me. I told Doctor Kerin that when I went there, they told me the salary was low but, however, because I was greatly interested in research, they told me that I could have any tools available to me that I desired. This is where all and everything was going.

I generally worked for them about 16 or 17 hours and every other night I was on call, while my colleague, because we were in an area which was half very rich, very Jewish and elderly, and half in the slums, he wouldn't come in for anyone who didn't have money and they would never do anything about it.

They never supplied me with a single research instrument. The only instrument from my surgery that they ever bought for me was a single bone knife.

At the end of the year, I brought down with me Doctor Fred Nathan, who was also trained with me at

Mayo's. Doctor Coventry, I think, would have very fine things to say about him because he asked him to stay on the staff.

During this period of time while we were there, I felt Doctor Nathan and I were very productive in our work. We published two papers and gave a talk together. We also, I believe, took care of an awful lot of patients.

However, I was grossly dissatisfied with the way these people treated me and perhaps was verbal about it, but they did do one thing for me -- and I will admit it -- they helped me adopt my son, and because of it, at the end of the year, otherwise, I would have left the group, just as Doctor Shapiro had done.

Well, I finally couldn't tolerate some of their treatment of me and I was verbal about it, but I really believe that I had been taken gross advantage of. I then left the group, leaving them with Doctor Siegel, Doctor Topouzian, and Doctor Fred Nathan.

About three months later, Fred called me up in great despair. While I was there, all the skut work, all of the problems had descended on me and he didn't quite realize what he was into. He subsequently left the group.

At pages 49 and 50:

.....

Dr. Schlein: I will say this: If I was vocal, yes, but I also think that if someone looked into this, they would find out that I had very, very good reason for being vocal, and that I was somewhat cheated, insulted, thrust upon by the group in many ways and in many fashions, and all I can say is that there are always two sides to a story, but if you would read the letterhead of the group and go through the men that are there, you would find out that all of the young men have left the group, including the three orthopods, and the other two men are just as fine orthopedic surgeon and as fine a person as you would want to meet.

They felt I might have been too verbal with them, but I was under a great deal of pressure, considering the fact that before they came, I was essentially doing all the emergency work, even though I was supposedly on call every other night.

DOCTOR NAIMAN: Do you feel that because you left, that precluded them from writing a good letter of recommendation?

DOCTOR SCHLEIN: I don't know.

At pages 56 and 57:

.....

DOCTOR KERIN: Doctor Schlein, may I ask you a question at this point.

Do you tend to sense a trend or a certain theme in the letters that the Committee has received so far?

DOCTOR SCHLEIN: No, because I think that the only one that has any validity or any criticism of any validity is Doctor Siegel's letter, all right, and the other two we will discuss, but I would be willing to accept if Doctor Siegel says I was vocal about my disappointment. I will accept that.

At pages 140-143:

.....

DOCTOR SCHLEIN: When I was in Rochester, Minnesota, I was ethical enough to be the police surgeon for the County Sheriff. I was the police surgeon for the State Police. I was a personal friend of the Judge. I also was acquainted with United States Supreme Court Justice Blackmun.

I don't think, as I said before, that the burden of proof is on me either to deny or to prove. The burden is on the Committee to find I am unethical.

If you say to me specifically, "Al, why are you trying to pull the wool over your complaints? In

Chicago, there were five complaints over at the AMA. And it was not because you were in a rough group, but because you didn't know what you were doing."

What they did to me out there, they did to a lot of people. It is not pleasant.

There is a question of whether there is a complaint against me with the AMA at this time. I would suggest that you call Doctor Parker about that. To my knowledge, there are no complaints against me with the AMA, with the police, with the income tax people. My wife has a lot of complaints, but I don't know if I can ever do anything about that. I have never been brought up on charges, even in our own hospital, except for the one oral complaint that I admitted to. I tried to show you letters. I tried to again bring up what went on with those, and I think you have a right at this hearing to ask about the letters you received.

DOCTOR CORSARO: May I read something from the Bylaws. It is on Page 18, Subsection h, the last four lines.

"...but the affected practitioner shall thereafter be responsible for supporting his challenge to the adverse recommendation or decision by an appropriate showing that the charges or grounds involved lack any factual basis or that such basis or any action based thereon is either arbitrary, unreasonable or capricious."

It is not the function of this Committee to prove that you are.

DOCTOR SCHLEIN: I think you have not proved that I am.

DOCTOR CORSARO: We are attempting to listen to you, so you make it clear to the Ad Hoc Committee that these statements --

DOCTOR SCHLEIN: I am trying to.

I feel I am competent, I feel I am ethical, and I think if I didn't feel that way, I wouldn't be here tonight, I would have ducked out the door, and it is very, very difficult for a man to prove that I am ethical, where am I this or how do I get along with people.

I beg you to come down to Park City and ask the nurses --

DOCTOR LEWIS: Ask the janitors, the maintenance people. Ask them, too.

DOCTOR SCHLEIN: Ask your Chief of Anesthesia. I can supply a letter from him. As a matter of fact, Doctor Norff was on the Credentials Committee when I was accepted at Park City Hospital.

All I can tell you is this: At this stage, and I again repeat, I think I have shown you that I certainly don't have a record of being unethical. I think if you look closely, you will find that I also get along pretty well with people. There is not a surgeon and not a doctor that doesn't have these days and we found one of them in the record. All right.

I have been in this town now for five months. I know patients come to us who have picked us out of the phone book, have other doctors. Has any doctor here received a complaint that a patient came to me and was treated discourteously? That I didn't send a letter, even if he didn't refer him? That I cheated him?

CHAIRMAN WESTON: I don't know of any.

At page 145:

.....

DOCTOR SCHLEIN: I will be honest with you. I know you gentlemen haven't heard of me, but I have been hurt by the allegations here.

I wish you would check further -- all right -- and you know Doctor Kamens. I am sure some of you know the others. I didn't pick these letters up in one day out of the clear blue sky. These people know me and I think they respect me. I don't think I am a loudmouth. I don't think I am a bum. But I did argue with Doctor Siegel.

EXCERPTS OF MINUTES OF THE MEETING OF THE EXECUTIVE COMMITTEE
OF THE BOARD OF DIRECTORS OF THE MILFORD HOSPITAL

February 27, 1974

At pages 23 and 24:

.....

MR. COUGHLIN: Dr. Schlein, did you advise Dr. Parker that I was contemplating a litigation?

DR. SCHLEIN: We discussed it several times. I don't know. But the reason that it was discussed with Dr. Parker was that we were going to put a request before the Fairfield County Medical Association. I would like to add one thing. Despite the allegation that you are making that Dr. Shanley reversed this because he was threatened with a lawsuit, perhaps it would be fair to say that anything Dr. Shanley said is true. There is certainly a basis, I would believe, and I'm not an attorney, and Dr. Parker certainly felt that there was certainly a basis for this to be brought before the Board of Censors. Because there is not a word in any of his statements that is true, and I wish the committee would be considering this, which is more important why he would reverse it.

MR. RONAI: I don't want to speak for the Chairman.

CHAIRMAN JOHNSON: I think it is a fair

observation.

[MR. ROMAI: I only wish to convey, but it is not only my opinion,, but the opinion of the committee, that the fact that the statement has been withdrawn in writing under his signature is an indication that the declarant of the statement is undercutting his own veracity in withdrawing the statement. And that is, in itself, an admission casting serious doubt on the basis of the statement. So that's not too much of an issue. And in terms of that, we want to determine the circumstances of this and if in fact it was not so and you were privileged to file a complaint, this was your right. It may have entered into it, it may not have, but the fact is that it has been withdrawn, it is technically no longer in the case.)

BYLAWS, RULES & REGULATIONS

of

THE MEDICAL STAFF OF MILFORD HOSPITAL

Milford, Connecticut

Date Adopted: November 21, 1972

PREAMBLE

Recognizing that the Medical Staff is responsible for the quality of medical care in the Hospital and must accept and assume this responsibility, subject to the ultimate authority of the Hospital Governing Body and that the best interests of the patient are protected by concerted effort, the physicians and dentists and allied professional personnel practicing in Milford Hospital hereby organize themselves in conformity with the Bylaws, Rules and Regulations hereinafter stated, to which they individually and severally subscribe.

For the purpose of these Bylaws the term "Medical Staff" shall be interpreted to include all physicians and dentists and allied professional personnel who are privileged to attend patients in Milford Hospital.

Whenever the term "Governing Body" appears, it shall be interpreted to refer to the Board of Directors of Milford Hospital, Inc.

ARTICLE I

NAME

The name of this organization shall be "Medical Staff of Milford Hospital".

ARTICLE II

PURPOSE

The Purpose of this organization shall be:

1. To insure that all patients admitted to the Hospital or treated in the outpatient department receive the best possible care;

2. To insure a high level of professional performance of all practitioners authorized to practice in the hospital, through the appropriate delineation of the clinical privileges that each practitioner may exercise in the Hospital and through an ongoing review and evaluation of each practitioner's performance in the Hospital;

3. To provide a means whereby problems of medico-administrative nature may be discussed by the Medical Staff with the Governing Body and the Administration;

4. To initiate and maintain rules and regulations for government of the Medical Staff;

5. To provide education and to maintain educational standards.

ARTICLE III

MEMBERSHIP

Section 1. Nature of Medical Staff Membership

Membership on the Medical Staff of the Milford Hospital is a privilege which shall be extended only to professionally competent practitioners who continuously meet the qualifications, standards and requirements set forth in these Bylaws.

Section 2. Minimum qualifications

Subsection 1. Only physicians and dentists licensed to practice in the State of Connecticut, who can document their background, experience, training and demonstrated competence, their adherence to the ethics of their profession, their good reputation, and their ability to work with others, with sufficient adequacy to assure the Medical Staff and the Governing Body that any patient treated by them in the Hospital will be given a high quality of medical care, shall be qualified for membership on the Medical Staff.

Such physicians and dentists must maintain a permanent office in the City of Milford from which said doctor is engaged in the continuous care and treatment of patients.

No physician or dentist shall be entitled to membership on the Medical Staff or to the exercise of particular clinical privileges in the Hospital merely by virtue of the fact that he is duly licensed to practice medicine or dentistry in this or any other state, or that he is a member of some professional organization, or that he had in the past, or presently has, such privileges at another hospital.

Subsection 2. He shall be willing to abide by the Bylaws set forth in this document and by such Rules and Regulations as may from time to time be made.

Subsection 3. Members of allied professions shall be subject to Subsection 2 above.

Subsection 4. For the purpose of this article, Hospital-based physicians are considered to have their office in the Hospital.

Section 3. Ethics and Ethical Relationships

Subsection 1. Strict ethical conduct is imperative. The professional conduct of members of the Medical Staff shall be governed by the principles of medical ethics as published by the American Medical Association. Members shall conform to the articles therein set forth. Furthermore, all members shall pledge themselves neither to give to, nor accept from, any other physician a fee for professional services or any part thereof, whether directly or indirectly, under penalty of loss of all privileges in the Hospital.

Subsection 2. The principle objective of the medical profession is to render service to humanity with full respect for the dignity of man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion.

Subsection 3. Physicians should strive continually to improve medical knowledge and skill, and should make available to their patients and colleagues the benefits of their professional attainments.

Subsection 4. A physician should practice a method of healing founded on scientific basis; and he should not voluntarily associate professionally with anyone who violates this principle.

Subsection 5. The medical profession should safeguard the public and itself against physicians deficient in moral character or professional competence. Physicians should observe all laws, uphold the dignity and honor of the profession and accept its self-imposed disciplines. They should expose, without hesitation, illegal or unethical conduct of fellow members of the profession.

Subsection 6. A physician may choose whom he will serve. In an emergency however, he should render service to the best of his ability. Having undertaken the care of a patient, he may not neglect him; and unless he has been discharged, he may discontinue his services only after giving adequate notice. He should not solicit patients.

Subsection 7. A physician should not dispose of his services under terms or conditions which tend to interfere with or impair the free and complete exercise of his medical judgment and skill or tend to cause a deterioration of the quality of medical care.

Subsection 8. In the practice of medicine a physician should limit the source of his professional income to medical services actually rendered by him, or under his supervision, to his patients. His fee should be commensurate with the services rendered and the patient's ability to pay. He should neither pay nor receive a commission for referral of patients. Drugs, remedies or appliances may be dispensed or supplied by the physician provided it is in the best interest of the patient.

Subsection 9. A physician should seek consultation upon request; in doubtful or difficult cases; or whenever it appears that the quality of medical service may be enhanced thereby.

Subsection 10. A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or the community.

Subsection 11. The honored ideals of the medical profession imply that the responsibilities of the physician extend not only to the individual, but also to society where these responsibilities deserve his interest and participation in activities which have the purpose of improving both the health and the well-being of the individual and the community.

Section 4. Terms of Appointment

Subsection 1. Appointments shall be made by the Governing Body of the Hospital after recommendation of the Medical Staff and shall remain effective until the next annual meeting of the Board of Directors. For the purposes of these Bylaws the Medical Staff year commences on the first day of December and ends on the 30th day of November of each year.

Subsection 2. In no case shall the Governing Body take action on an application, refuse to renew an appointment or cancel an appointment previously made without conference with the Medical Staff.

Subsection 3. Appointments to the Medical Staff shall confer on the appointee only such privileges as may hereinafter be provided.

Subsection 4. At the end of the Hospital year in which the Staff member has attained the age of sixty years, he may, upon his written request to the Executive Committee of the Medical Staff, be relieved of the responsibilities to attend a service, to serve upon Staff committees, and to hold office. There will be no change in the designation of his Staff appointment, and he may vote. All other rights and privileges associated with a Staff appointment will be unaffected.

Section 5. Procedure of Appointment

Subsection 1. Their application for appointment

a. Application for membership on the Medical Staff shall be presented in writing, and shall state the qualifications and references of the applicant and shall also signify his agreement to abide by the Bylaws, Rules and Regulations of the Medical Staff, and the principles of medical ethics of the American Medical Association.

b. The applicant shall have the burden of producing adequate information for a proper evaluation of his competence, character, ethics and other qualifications, and for resolving any doubts about such qualifications.

c. The application for membership on the Medical Staff shall be presented to the Administrator of the Hospital who shall transmit it to the Secretary of the Medical Staff.

Subsection 2. The Secretary of the Medical Staff having recorded receipt of the application for membership will transmit it to the Credentials Committee of the Medical Staff and will report his receipt of the application and the report of this action to the Medical Staff at the first regular meeting thereafter.

Subsection 3. The Credentials Committee shall investigate the character, qualifications, references, and standing of the applicant and shall submit a report of findings to the Medical Staff as soon as possible, and in all cases within three months, recommending that the application be accepted, deferred, or rejected. All proposed recommendations for new appointments shall be submitted by the Credentials Committee to the Medical Staff for approval at a regular Medical Staff meeting. Where a recommendation to defer is made, it must be followed by one to accept or reject the applicant at the next meeting of the Medical Staff. Any recommendation for appointment should include a delineation of privilege.

Subsection 4. Recommendations for reappointment from each clinical department shall be considered yearly by the Executive Committee of the Medical Staff and shall be presented for consideration at the annual meeting of the General Medical Staff so that action may be taken by the Governing Board at its next meeting and shall include designation of rank, privileges, and service for each physician.

Subsection 5. On receipt of the report of the Credentials Committee or the Executive Committee in the case of annual reappointments, the Medical Staff shall immediately recommend to the Governing Body that the application be accepted, deferred, or rejected, and if accepted, the privileges to be granted.

Subsection 6. The recommendation of the Medical Staff shall be transmitted to the Governing Body of the Hospital through the Administrator.

Subsection 7. The Governing Body shall either accept the recommendation of the Medical Staff or shall refer it back for further consideration stating the reasons for such action.

ubsection 8. When final action has been taken by the Governing Body, the Administrator of the Hospital shall be authorized to transmit this decision to the candidate for membership and, if he is accepted, to secure his signed agreement to be governed by these Bylaws, Rules and Regulations, and principles of medical ethics.

ubsection 9. Restriction of Clinical Privileges. Every practitioner practicing at this Hospital by virtue of Medical Staff membership or otherwise shall, in connection with such practice, be entitled to exercise only those clinical privileges specifically granted to him by the Governing Body, except as provided in Section 6 of this Article III.

ubsection 10. Every initial application for Staff appointment must contain a request for the special privileges desired by the applicant. The evaluation of such request shall be based upon the applicants education, training, experience, demonstrated competence, references and other relevant information, including an appraisal by the clinical department in which such privileges are sought. The applicant shall have the burden of establishing his qualifications and competency in the clinical privileges he requests.

Section 6. Emergency and Temporary Privileges

ubsection 1. Regardless of his departmental or staff status, in case of emergency the physician attending the patient shall be expected to do all in his power to save the life of the patient, including the calling of such consultation as may be available. For the purpose of this section, an emergency is defined as a condition in which the life of the patient is in immediate danger and in which any delay in administering treatment would increase the danger.

ubsection 2. The Administrator of the Hospital after conference with the Chief of Staff shall have the authority to grant temporary privileges to a physician who is not a member of the Medical Staff. The Chief of Staff shall give an authoritative opinion as to the competence and ethical standing of the physician who desires such temporary privileges and in the exercise of such privileges he shall be directly responsible to the Chief of the appropriate department.

c. The Executive Committee may recommend modification, continuance or termination of the terms of the summary suspension. If, as a result of such hearing, the Executive Committee does not recommend immediate termination of the summary suspension, the affected practitioner shall, also in accordance with Article VIII, be entitled to request an appellate review by the Governing Body, but the terms of the summary suspension as sustained or as modified by the Executive Committee shall remain in effect pending a final decision thereon by the Governing Body.

d. Immediately upon the imposition of a summary suspension, the chairman of the Executive Committee or responsible departmental chairman shall have authority to provide for alternative medical coverage for the patients of the suspended practitioner still in the Hospital at the time of such suspension. The wishes of the patients shall be considered in the selection of such alternative practitioner.

Section 3. Automatic Suspension

a. A temporary suspension in the form of withdrawal of a practitioner's admitting privileges, effective until medical records are completed shall be imposed automatically after warning of delinquency for failure to complete medical records within fourteen days of a patient's discharge.

b. Action by the State Board of Medical Examiners revoking or suspending a practitioner's license, or placing him upon probation, shall automatically suspend all of his Hospital privileges.

c. It shall be the duty of the president of the Medical Staff to cooperate with the Chief Executive Officer in enforcing all automatic suspensions.

ARTICLE VIII

HEARING AND APPELLATE REVIEW PROCEDURE

Section 1. Right to Hearing and to Appellate Review

a. When any practitioner receives notice of a recommendation of the Executive Committee that, if ratified by decision of the Governing Body, will adversely affect his appointment to or status as a member of the Medical Staff or his exercise of clinical privileges, he shall be entitled to a hearing before an ad hoc committee of the Medical Staff. If the recommendation of the Executive Committee following such hearing is still adverse to the affected practitioner, he shall then be entitled to an appellate review by the Governing Body before the Governing Body makes a final decision on the matter.

b. When any practitioner receives notice of a decision by the Governing Body that will affect his appointment to or status as a member of the Medical Staff or his exercise of clinical privileges, and such decision is not based on a prior adverse recommendation by the Executive Committee of the Medical Staff with respect to which he was entitled to a hearing and appellate review, he shall be entitled to a hearing by a committee appointed by the Governing Body, and if such hearing does not result in a favorable recommendation, to an appellate review by the Governing Body, before the Governing Body makes a final decision on the matter.

All hearings and appellate reviews shall be in accordance with the procedural safeguards set forth in this Article VIII to assure that the affected practitioner is accorded all rights to which he is entitled.

Section 2. Request for Hearing

The Chief Executive Officer shall be responsible for giving prompt written notice of an adverse recommendation or decision to any affected practitioner who is entitled to a hearing or to an appellate review, by certified mail, return receipt requested.

The failure of a practitioner to request a hearing to which he is entitled by these Bylaws within the time and in the manner herein provided shall be deemed a waiver of his right to such hearing and to any appellate review to which he might otherwise have been entitled on the matter. The failure of a practitioner to request an appellate review to which he is entitled by these Bylaws within the time and in the manner herein provided shall be deemed a waiver of his right to such appellate review on the matter.

When the waived hearing or appellate review relates to an adverse recommendation of the Executive Committee of the Medical Staff or of a hearing committee appointed by the Governing Body, the same shall thereupon become and remain effective against the practitioner pending the Governing Body's decision on the matter. When the waived hearing or appellate review relates to an adverse decision by the Governing Body, the same shall thereupon become and remain effective against the practitioner in the same manner as a final decision of the Governing Body provided for in Section 7 of this Article VIII. In either of such events, the Chief Executive Officer shall promptly notify the affected practitioner of his status by certified mail, return receipt requested.

Section 3. Notice of Hearing

Within ten days after receipt of a request for hearing from a practitioner entitled to the same, the Executive Committee or the Governing Body, whichever is appropriate, shall schedule and arrange for such a hearing and shall, through the Chief Executive Officer, notify the practitioner of the time, place and date so scheduled, by certified mail, return receipt requested. The hearing date shall be not less than seven days, nor more than twenty-one days from the date of receipt of the request for hearing; provided, however, that a hearing for a practitioner who is under suspension which is then in effect shall be held as soon as arrangements therefore may reasonably be made, but not later than twenty-one days from the date of the receipt of such practitioner's request for hearing.

The notice of hearing shall state in concise language the acts or omissions with which the practitioner is charged, a list of specific or representative charts being questioned, and/or the other reasons or subject matter that was considered in making the adverse recommendation or decision.

Section 4. Composition of Hearing Committee

a. When a hearing relates to an adverse recommendation of the Executive Committee, such hearing shall be conducted by an ad hoc hearing committee of not less than five members of the Medical Staff appointed by the president of the Medical Staff in consultation with the Executive Committee, and one of the members so appointed shall be designated as chairman. No staff member who has actively participated in the consideration of the adverse recommendation shall be appointed a member of this hearing committee unless it is otherwise impossible to select a representative group due to the size of the medical staff.

b. When a hearing relates to an adverse decision of the Governing Body that is contrary to the recommendation of the Executive Committee, the Governing Body shall appoint a hearing committee to conduct such hearing and shall designate one of the members of the committee as chairman. At least one representative from the Medical Staff shall be included on this committee when feasible.

Section 5. Conduct of Hearing

a. There shall be at least a majority of the members of the hearing committee present when the hearing takes place, and no member may vote by proxy.

b. An accurate record of the hearing must be kept. The mechanism shall be established by the ad hoc hearing committee, and may be accomplished by use of a court reporter or electronic recording unit.

c. The personal presence of the practitioner for whom the hearing has been scheduled shall be required. A practitioner who fails without good cause to appear and proceed at such hearing shall be deemed to have waived his rights in the same manner as provided in Section 2 of this Article VIII and to have accepted the adverse recommendation or decision involved, and the same shall thereupon become and remain in effect as provided in said Section 2.

d. Postponement of hearings beyond the time set forth in these Bylaws shall be made only with the approval of the ad hoc hearing committee. Granting of such postponements shall only be for good cause shown and in the sole discretion of the hearing committee.

e. The affected practitioner shall be entitled to be accompanied by and/or represented at the hearing by a member of the Medical Staff in good standing or by a member of his local professional society.

f. Either a hearing officer, if one is appointed, or the chairman of the hearing committee or his designee, shall preside over the hearing to determine the order of procedure during the hearing, to assure that all participants in the hearing have a reasonable opportunity to present relevant oral and documentary evidence and to maintain decorum.

The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be considered, regardless of the existance of any common law or statutory rule which might make evidence inadmissable over objection in civil or criminal action. The practitioner for whom the hearing is being held shall, prior to or during the hearing, be entitled to submit memoranda concerning any issue of procedure or of fact and such memoranda shall become a part of the hearing record.

The Executive Committee, when its action has prompted the hearing, shall appoint one of its members or some other Medical Staff member to represent it at the hearing, to present the facts in support of its adverse recommendation, and to examine witnesses. The Governing Body, when its action has prompted the hearing, shall appoint one of its members to represent it at the hearing, to present the facts in support of its adverse decision and to examine witnesses. It shall be the obligation of such representative to present appropriate evidence in support of the adverse recommendation or decision, but the affected practitioner shall thereafter be responsible for supporting his challenge to the adverse recommendation or decision by an appropriate showing that the charges or grounds involved lack any factual basis or that such basis or any action based thereon is either arbitrary, unreasonable or capricious.

The affected practitioner shall have the following rights: to call and examine witnesses, to introduce written evidence, to cross-examine any witness on any matter relevant to the issue of the hearing, to challenge any witness and to rebut any evidence. If the practitioner does not testify in his own behalf, he may be called and examined as if under cross-examination.

The hearings provided for in these Bylaws are for the purpose of resolving, on an intra-professional basis, matters bearing on professional competency and conduct. Accordingly, neither the affected practitioner, nor the Executive Committee of the Medical Staff or the Governing Body, shall be represented at any phase of the hearing procedure by an attorney at law unless the hearing committee, in its discretion, permits both sides to be represented by counsel. The foregoing shall not be deemed to deprive the practitioner, the Executive Committee of the Medical Staff, or the Governing Body, of the right to legal counsel in connection with preparation for the hearing or for a possible appeal; and, if a hearing officer is utilized, he may be an attorney at law.

The hearing committee may, without special notice, recess the hearing and reconvene the same for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The hearing committee may thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the practitioner for whom the hearing was convened.

The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be considered, regardless of the existance of any common law or statutory rule which might make evidence inadmissible over objection in civil or criminal action. The practitioner for whom the hearing is being held shall, prior to or during the hearing, be entitled to submit memoranda concerning any issue of procedure or of fact and such memoranda shall become a part of the hearing record.

The Executive Committee, when its action has prompted the hearing, shall appoint one of its members or some other Medical Staff member to represent it at the hearing, to present the facts in support of its adverse recommendation, and to examine witnesses. The Governing Body, when its action has prompted the hearing, shall appoint one of its members to represent it at the hearing, to present the facts in support of its adverse decision and to examine witnesses. It shall be the obligation of such representative to present appropriate evidence in support of the adverse recommendation or decision, but the affected practitioner shall thereafter be responsible for supporting his challenge to the adverse recommendation or decision by an appropriate showing that the charges or grounds involved lack any factual basis or that such basis or any action based thereon is either arbitrary, unreasonable or capricious.

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The hearing committee may, without special notice, recess the hearing and reconvene the same for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed. The hearing committee may thereupon, at a time convenient to itself, conduct its deliberations outside the presence of the practitioner for whom the hearing was convened.

i. Within seven days after final adjournment of the hearing, the hearing committee shall make a written report and recommendation and shall forward the same together with the hearing record and all other documentation to the Executive Committee or to the Governing Body, whichever appointed it. The report may recommend confirmation, modification, or rejection of the original adverse recommendation of the Executive Committee or decision of the Governing Body. Thereafter, the procedure to be followed shall be as provided in Section 5 of Article III of these Bylaws.

Section 6. Appeal to the Governing Body

a. Within ten days after receipt of a notice by an affected practitioner of an adverse recommendation or decision made or adhered to after a hearing as above provided, he may, by written notice to the Governing Body delivered through the Chief Executive Officer by certified mail, return receipt requested, request an appellate review by the Governing Body. Such notice may request that the appellate review be held only on the record on which the adverse recommendation or decision is based, as supported by the practitioner's written statement provided for below, or may also request that oral argument be permitted as part of the appellate review.

b. If such appellate review is not requested within ten days, the affected practitioner shall be deemed to have waived his right to the same, and to have accepted such adverse recommendation or decision and the same shall become effective immediately as provided in Section 2 of this Article VIII.

c. Within ten days after receipt of such notice of request for appellate review, the Governing Body shall schedule a date for such review, including a time and place for oral argument if such has been requested, and shall, through the Chief Executive Officer, by written notice sent by certified mail, return receipt requested, notify the affected practitioner of the same. The date of the appellate review shall not be less than seven days, nor more than twenty-one days, from the date of receipt of the notice of request for appellate review, except that when the practitioner requesting the review is under a suspension which is then in effect, such review shall be scheduled as soon as the arrangements for it may reasonably be made, but not more than twenty-one days from the date of receipt of such notice.

d. The appellate review shall be conducted by the Governing Body or by a duly appointed appellate review committee of the Governing Body of not less than five members.

The affected practitioner shall have access to the report and record (and transcription, if any) of the ad hoc hearing committee and all other material, favorable or unfavorable, that was considered in making the adverse recommendation or decision against him. He shall have ten days to submit a written statement in his own behalf, in which those factual and procedural matters with which he disagrees, and his reasons for such disagreement shall be specified. This written statement may cover any matters raised at any step in the procedure to which the appeal is related, and legal counsel may assist in its preparation. Such written statement shall be submitted to the Governing Body through the Chief

BEST COPY AVAILABLE

Executive Officer by certified mail, return receipt requested, at least seven days prior to the scheduled date for the appellate review. A similar statement may be submitted by the Executive Committee of the Medical Staff or by the chairman of the hearing committee appointed by the Governing Body, and if submitted, the Chief Executive Officer shall provide a copy thereof to the practitioner at least seven days prior to the date of such appellate review by certified mail, return receipt requested.

f. The Governing Body or its appointed review committee shall act as an appellate body. It shall review the record created in the proceedings, and shall consider the written statements submitted pursuant to subparagraph e. of this Section 6, for the purpose of determining whether the adverse recommendation or decision against the affected practitioner was justified and was not arbitrary or capricious. If oral argument is requested as part of the review procedure, the affected practitioner shall be present at such appellate review, shall be permitted to speak against the adverse recommendation or decision, and shall answer questions put to him by any member of the appellate review body. The Executive Committee or the Governing Body, whichever is appropriate, shall also be represented by an individual who shall be permitted to speak in favor of the adverse recommendation or decision and who shall answer questions put to him by any member of the appellate review body.

g. New or additional matters not raised during the original hearing or in the hearing committee report, nor otherwise reflected in the record, shall only be introduced at the appellate review under unusual circumstances, and the Governing Body or the committee thereof appointed to conduct the appellate review shall in its sole discretion determine whether such new matters shall be accepted.

h. If the appellate review is conducted by the Governing Body, it may affirm, modify or reverse its prior decision, or, in its discretion, refer the matter back to the Executive Committee of the Medical Staff for further review and recommendation within ten days. Such referral may include a request that the Executive Committee of the Medical Staff arrange for a further hearing to resolve specified disputed issues.

i. If the appellate review is conducted by a committee of the Governing Body, such committee shall, within seven days after the scheduled or adjourned date of the appellate review, either make a written report recommending that the Governing Body affirm, modify or reverse its prior decision, or refer the matter back to the Executive Committee for further review and recommendation within twenty-one days. Such referral may include a request that the Executive Committee of the Medical Staff arrange for a further hearing to resolve disputed issues. Within twenty-one days after receipt of such recommendation after referral, the committee shall make its recommendation to the Governing Body as above provided.

j. The appellate review shall not be deemed to be concluded until all of the procedural steps provided in this Section 6 have been completed or waived. Where permitted by the Hospital Bylaws, all action required of the Governing Body may be taken by a committee of the Governing Body duly authorized to act.

Section 7. Final Decision of Governing Body

Within thirty days after the conclusion of the appellate review, the Governing Body shall make its final decision in the matter and shall send notice thereof to the Executive Committee and, through the Chief Executive Officer, to the affected practitioner, by certified mail, return receipt requested. If this decision is in accordance with the Executive Committee's last recommendation in the matter, it shall be immediately effective and final, and shall not be subject to further hearing or appellate review. If this decision is contrary to the Executive Committee's last such recommendation, the Governing Body shall refer the matter to the Joint Conference Committee for further review and recommendation within seven days, and shall include in such notice of its decision a statement that a final decision will not be made until the Joint Conference Committee's recommendation has been received. At its next meeting after receipt of the Joint Conference Committee's recommendation, the Governing Body shall make its final decision with like effect and notice as first above provided in this Section 7.

Notwithstanding any other provision of these Bylaws, no practitioner shall be entitled as a right to more than one hearing and one appellate review on any matter which shall have been the subject of action by the Executive Committee of the Medical Staff, or by the Governing Body, or by a duly authorized committee of the Governing Body or by both.

ARTICLE IX

OFFICERS

Section 1. Officers of the Medical Staff

The officers of the Medical Staff shall be:

1) President (Chief of Staff)
2) Vice President
3) Secretary

Section 2. Qualifications of Officers

Officers must be members of the Active Medical Staff at the time of nomination and election and must remain members in good standing during their term of office. Failure to maintain such status shall immediately create a vacancy in the office involved.

Section 3. Election of Officers

Officers shall be elected at the annual meeting of the Medical Staff. Only members of the Active and Associate Medical Staffs shall be eligible to vote.

The nominating committee shall consist of members of the Active Medical Staff appointed by the president of the Medical Staff. This committee shall offer one or more nominees for each office.

AMENDING & RESTATING CERTIFICATE OF INCORPORATION
BY ACTION OF THE BOARD OF DIRECTORS (NON-STOCK CORPORATION)

SECRETARY OF STATE
STATE OF CONNECTICUT

Date: August 26, 1969

1. The Certificate of Incorporation is amended and restated by the following resolution:

BE IT RESOLVED that the Certificate of Incorporation of THE MILFORD HOSPITAL, INCORPORATED, a non-stock corporation incorporated on July 6, 1920, be amended and restated by approving the original of a new certificate of incorporation containing the following provisions as follows.

2. The corporation shall continue to be known as THE MILFORD HOSPITAL, INCORPORATED.

The nature of the activities to be conducted or the purposes to be promoted or carried out shall be as follows:

a) To establish and maintain an institution within the State of Connecticut with permanent facilities that include in-patient beds and medical services, to provide diagnosis and treatment for patients, and to carry on any associated or allied services in connection therewith;

b) To carry on any educational activities related to the rendering of care to the sick and injured, or to the promotion of health, that in the opinion of the Board of Directors may be jusitified by the facilities, personnel, funds andother requirements that are or can become or made available;

c) To promote and carry on scientific research related to the care of the sick and injured insofar as, in the opinion of the Board of Directors, such research can be carried on, or in connection with, the Hospital;

d) To participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community;

e) In addition to the specific purposes set forth above, this corporation shall have the following powers:

(i) Acquire, by purchase or otherwise, hold, sell, convey and have and exercise by any and all rights of ownership or interest in or to any real or personal property whatsoever, including, without limitation, shares, securities and any other interest in or obligation of other corporations or associations, individuals or governmental units;

(ii) Borrow money, issue promissory notes, bonds or other evidences of indebtedness and secure the same by mortgage, pledge or other form of security on any or all of its real or personal property or any interest therein;

(iii) Make contracts, including contracts of guaranty or suretyship or other similar financial arrangements, and give security therefor;

(iv) Enter into any arrangement with others for any union of interest with respect to any activities which the corporation has power to conduct by itself, even if such arrangement involves sharing or delegation of control of such activities with or to others; and

(v) Exercise all legal powers necessary or convenient to effect any or all of the purposes stated in its certificate of incorporation whether or not such powers are set forth in its certificate of incorporation.

f) This corporation is organized exclusively for charitable, scientific and education purposes as a not-for-profit corporation and shall not have or issue shares of stock or pay dividends, and its activities shall be conducted for the aforesaid purposes in such a manner that no part of its net earning shall inure to the benefit of any member, director, officer or individual. Upon dissolution of the corporation, and after payment of just debts and liabilities, all remaining assets shall be distributed to organizations enjoying an exempt status under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or successor provisions. The corporation shall not substantially engage in carrying on propaganda or otherwise attempting to influence legislation.

3. The corporation shall have one class of members and any person, without regard to sex, race creed, color or national origin, desiring to associate for the purpose of establishing and maintaining a hospital in the City of Milford for medical and surgical treatment of all persons, who shall apply therefor, shall be eligible for membership. The procedure regulating the application for membership shall be as set forth in the by-laws.

4. The management and conduct of all the business affairs of the corporation shall be directed by the Board of Directors of not less than twelve members who shall be elected and who shall serve in accordance with the provisions of the by-laws hereinafter established. The terms of directors, the manner of fillin vacancies, and all other related matters shall be governed by the by-laws hereinafter established.

5. a) The above resolution merely restates and does not change the provisions of the original certificate as supplemented and amended to date, except as follows:

   Section 2 of the original certificate, which set forth the purposes of the corporation, has been expanded to conform with the requirements of existing statutes, and in particular the Internal Revenue Code of 1954. The amended and restated certificate also sets forth the minimum number of Directors.

   b) Other than as indicated herein, there is no discrepancy between the provisions of the original certificate of incorporation and the provisions of this certificate restating and amending the certificate of incorporation.

6. The above resolution was adopted by the Board of Directors acting alone, the corporation being a nonstock corporation and having no members and no applicants for membership entitled to vote on such resolution.

Form 61-58

State of Connecticut
OFFICE OF SECRETARY OF THE STATE } SS. HARTFORD

I hereby certify that the foregoing is a true copy of record in this office

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed the Seal of said State, at Hartford, this 9th day of September A.D., 19 69

Ella T. Grasso

EXHIBIT to the Affidavit of Geor R. Plaskowitz
dated August 6, 19

1-6

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BYLAWS

of

THE MILFORD HOSPITAL, INCORPORATED

ARTICLE I

PURPOSES

Section 1. The nature of the activities to be conducted or the purposes to be promoted or carried out shall be as follows:

A. To establish and maintain an institution within the City of Milford with permanent facilities that include in-patient beds and medical services, to provide diagnosis and treatment for patients, and to carry on any associated or allied services in connection therewith, and to provide such care to those in need, regardless of sex, age,race, creed, color or national origin;

B. To carry on any educational activities related to the rendering of care to the sick and injured, or to the promotion of health, that in the opinion of the Board of Directors may be justified by the facilities, personnel, funds and other requirements that are or can become or made available;

C. To promote and carry on scientific research related to the care of the sick and injured insofar as, in the opinion of the Board of Directors, such research can be carried on, or in connection with, the Hospital;

D. To participate, so far as circumstances may warrant, in any activity designed and carried on to promote the general health of the community;

Section 2. This Corporation is organized exclusively for charitable, scientific and educational purposes as a not-for-profit corporation and shall not have or issue shares of stock or pay dividends, and its activities shall be conducted for the aforesaid purposes in such a manner that no part of its net earnings shall inure to the benefit of any member, director, officer or individual. Upon dissolution of the corporation, and after payment of just debts and liabilities, all remaining assets shall be distributed to organizations enjoying an exempt status under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or successor provisions. The Corporation shall not substantially engage in carrying on propaganda or otherwise attempting to influence legislation.

ARTICLE II

CORPORATION

Section 1. MEMBERSHIP. (Effective the date of the Board of Directors' Meeting in February of 1973)

There shall be no less than Thirty (30) nor more than Two Hundred (200) members of the Corporation who shall be called Corporators.

Corporators may be elected by majority vote of the Corporators present at any Annual Meeting of the Corporation or by a majority vote at any regular meeting of the Board of Directors or a special meeting called for that purpose subject to the following qualifications:

A. Corporators shall be chosen for their potential contribution to the Hospital, and thus, the community, in terms of leadership and other special knowledge, skills or abilities.

B. Corporation membership shall not be denied to any person because of sex, age, occupation, race, or religion, if criteria in (Article II, Section 1, A) above are met.

C. Corporators shall consider the health needs of all segments of the community by virtue of meeting the criteria in (Article II, Section 1, A) above.

Section 2. ANNUAL MEETING. The Annual Meeting of the Corporators of the Milford Hospital, Inc. shall be held in the City of Milford on the fourth Tuesday of November of each year at such time and place as shall be specified in the notice of the meeting.

Section 3. NOTICE. Notice of such meeting shall be given by or at the direction of the Secretary calling the meeting to each Corporator by mailing a copy thereof addressed to him at his last known post office address as last shown on the list of members of the Hospital, postage prepaid, not less than fifteen (15) days prior to the date of the meeting. Where both a husband and wife have membership in the Corporation, one notice addressed to both of them shall be sufficient. Each notice shall state the place, day and hour of the meeting.

Section 4. QUORUM. The presence of fifteen (15) Corporators shall be necessary to constitute a quorum for the transaction of business.

Section 5. SPECIAL MEETINGS. Special Meetings of the Corporators may be called by the President, or by a majority of the Board of Directors at any time. A special meeting shall be called by the Secretary on a written request of at least one-third of the membership. Notice of such meeting and the quorum requirements shall be as prescribed above for the Annual Meetings. No business other than that specified in the call for the Special Meeting shall be transacted at such meeting.

Section 6. VOTING. At all meetings of the Corporators all questions shall be determined by a majority vote of those present. All voting shall be by viva voce, except that a roll call vote shall be taken when so voted by a majority vote of those present. Voting by proxy or by other representative method shall not be permitted.

Section 7. The Secretary shall keep a record of business transacted and a record of elections and shall promptly notify each Corporator of his election.

Section 8. Corporators shall be elected for a period of one year and until their successors shall be chosen and qualify. Any Corporator may be re-elected.

Section 9. ORDER OF BUSINESS. The order of business at the Annual Meeting of the Corporators shall be as follows:

A. Roll Call

B. Proof of Notice of meeting or waiver of notice

C. Disposition of minutes of preceding meeting

D. Reports of officers

E. Reports of Committees

F. Election of Directors

G. Unfinished Business

H. New Business

ARTICLE III

DIRECTORS

Section 1. NUMBER. The management and conduct of all the business and affairs of the Corporation shall be performed by a Board of Directors of not less than twelve nor more than twenty-seven directors, all of whom shall at the time of election and acceptance of their office be Corporators in good standing of the Milford Hospital, Inc. as said requirements of membership are herein defined.

A. As provided in the ACT INCORPORATING THE MILFORD HOSPITAL, AS AMENDED, the Corporators of the Corporation shall elect, by a majority vote, at each Annual Meeting, the number of Directors specified herein: at the first annual election subsequent to the previous edition of these Bylaws, dated February 26, 1969, a Board of Directors shall be elected as follows: 1/3 of the members so elected shall hold office for a term of one year; 1/3 of the members shall hold office for a term of two years; 1/3 of the members shall hold office for a term of three years; or until their successors are duly elected.

B. Directors who are presently serving terms pursuant to previous elections, and whose terms do not expire at the first election held pursuant to these Bylaws, shall be recommended for reclassification by the Nominating Committee to the Board of Directors, so that such Directors who presently serve and who are willing and able to serve in the future shall be reclassified in one of the three classes in accordance with the requirements of the Corporation and of the Board of Directors.

C. In each succeeding election thereafter, as the term of each office expires, a successor may be elected and shall hold office for a term of three years except with respect to the terms of office of the Mayor or Chief Executive Officer of the City of Milford, the President of the Milford Hospital Auxiliary and the Administrator of the Hospital who shall serve a term consistent with their terms of office. The two members of the Medical Staff, one of whom shall be the Chief of Staff of Milford Hospital, as recommended by the Medical Staff, shall stand for election each year.

D. A member of the Board of Directors may serve for three consecutive three-year terms; provided, however, that if any member of the Board of Directors is elected an officer of the Corporation during his third consecutive three-year term, he shall be privileged to hold office as a Director for an additional three-year term, notwithstanding the fact that during the fourth three-year term he no longer serves as an officer. A Director is eligible for re-election to the Board of Directors after being off for one year.

Section 2. DUTIES OF DIRECTORS. The Board of Directors shall have the power to manage and conduct all the business and affairs of the Corporation and may provide terms of admission to membership, make such bylaws, rules and regulations as may be necessary from time to time for the management of the Corporation and its property.

A. To the extent permitted by law, the Board of Directors may delegate power and authority in the exercise of its duties and responsibilities, to its duly elected and duly appointed committees, and to the duly appointed Hospital Administrator, or other such qualified agent.

B. Said Board of Directors shall annually at its meeting held next after the Annual Meeting of the Corporation appoint the Medical Staff, provided any such appointment may be revoked at a meeting of said Directors duly called and held for that purpose by a two-thirds vote of the Directors present at said meeting. Vacancies occurring before the expiration of the year from the time of any appointment may be filled by the Directors.

C. Unless otherwise provided herein, the action of the Board of Directors shall be by a majority vote.

D. Said Board of Directors shall annually elect from their number a President and Vice President, and shall also elect a Secretary and Treasurer who may be one and the same person, an Assistant Treasurer, and may appoint such executive and administrative committees or officials as the Bylaws may require. All officers and committee members shall hold office for one year and/or until their successors are duly appointed.

Section 3. DIRECTORS MEETINGS. Regular meetings of the Board of Directors shall be held within ten days after the Annual Meeting of the Corporation, and in addition thereto at least three times a year, to wit: on the fourth Tuesday of February, May and August, and at such other times as the Board of Directors may determine.

A. Special Meetings of the Board of Directors may be called by the President individually at any time and shall be called by the Secretary upon the written request of seven Directors.

Section 4. NOTICE OF MEETINGS. Notice of all meetings of the Board of Directors shall be given by service upon each Director by mail, postage prepaid, by mailing to him at his last known post office address, at least forty-eight (48) hours prior thereto, a written notice specifying the time and place of said meeting and the business to be transacted at said meeting. Notice of a special meeting shall state the subject matter of the meeting. If all Directors, severally or collectively consent in writing to any action to be taken by the Board, and the number of such Directors constitutes a quorum for such action, such action shall be as valid corporate action as though it had been authorized at a meeting of the Board of Directors. The Secretary shall file such consents with minutes of the meetings of the Board of Directors.

Section 5. QUORUM. At any meeting of the Board of Directors, except as otherwise provided by the Bylaws, ten (10) members of the Board shall constitute a quorum for the transaction of business.

Section 6. VACANCIES. Vacancies in the Board occurring between annual meetings shall be filled by the remaining Directors for the unexpired portion of the term or until successors are elected.

Section 7. REMOVAL OF DIRECTORS. Any one or more of the Directors may be removed for cause, at any time by a vote of three-fourths of the entire membership of the Corporation, at a special meeting called for the purpose.

Section 8. ATTENDANCE. All members of the Board of Directors of the Corporation shall attend no less than fifty percent (50%) of the Board of Directors' regular meetings during the calendar year, and in the event that this minimum attendance requirement is not fulfilled, the Director's position shall be subject to forfeiture upon giving of adequate notice to the Director, and upon an appropriate vote of the Board of Directors at any regular or special meeting.

ARTICLE IV

HONORARY DIRECTORS

Section 1. Any one or more Directors who shall be unable to perform his duties during the term of his office by reason of disability or other cause shall be qualified for honorary membership on the Board of Directors or for the position of Honorary President or Honorary Vice President. Any one or more active members of the Corporation having rendered distinguished service to the Hospital shall be qualified for Honorary membership on the Board of Directors. The Board of Directors may elect such qualified persons as Honorary Directors or Honorary President or Honorary Vice President at any meeting of the Board by a majority vote of those present.

Section 2. POWERS AND DUTIES. An Honorary Director may attend meetings of the Board. He shall be heard on all matters and shall have the right to vote; provided, however, that said voting right shall be exercised only in person and not by proxy or other representative means. A vacancy shall exist in the office of any Director upon his election as an Honorary Director.

ARTICLE V

OFFICERS

Section 1. NUMBER. The officers of the Corporation shall be President, Vice President, Secretary, Treasurer and Assistant Treasurer.

Section 2. The Board of Directors, at its Annual Meeting, shall elect from their number by majority vote, a President and the above enumerated officers, all of whom shall serve for a term of one year or until their successors are elected.

Section 3. DUTIES OF OFFICERS. The duties and powers of the officers of the Corporation shall be as follows:

PRESIDENT

The President shall preside at all meetings of the Board of Directors and members. By virtue of his office he shall be an ex officio member of each committee of the Hospital and he shall have a voting right on all committees. He shall present at each annual meeting of the Hospital and at each meeting of the Board of Directors, a report of the condition of the business and affairs of the Hospital. He shall cause to be called regular and special meetings of the Hospital and of the Board of Directors in accordance with these Bylaws. Subject to the Board of Directors and the Executive Committee he shall have general charge of the business of the Hospital relating to its general operation. He shall keep the Board of Directors and the Executive Committee fully informed, and shall freely consult them concerning the business of the Hospital in his charge. He shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors and by the Executive Committee.

He shall represent the Hospital as its official representative in relation to appropriate outside agencies.

The above duties of the Administrator may be delegated by him to other qualified Hospital personnel as he may from time to time appoint.

ARTICLE IX

PROFESSIONAL STAFF

The Standards promulgated by the Joint Commission on Accreditation of Hospitals shall serve as the guidelines in establishing the responsibilities of the Medical Staff.

The Board of Directors shall appoint a Medical Staff composed of physicians and dentists and such other professional persons who are needed for the function of the Hospital. Only physicians and dentists who are licensed to practice medicine and dentistry in the State of Connecticut will receive such appointment. Only other professionals having a recognized standing as a particular specialist shall receive such appointments.

Practitioners applying for Medical Staff membership and/or clinical privileges shall submit their application in writing to the Administrator and in conformance with the Bylaws, Rules and Regulations of the Medical Staff and shall sign an agreement to abide by the Hospital Bylaws and by the Medical Staff Bylaws, Rules and Regulations at the time of their application. No applicant shall be denied Medical Staff membership and/or clinical privileges on the basis of age, sex, race, creed or national origin or on the basis of any other criterion lacking professional justification.

The Board of Directors, through the Professional Committee, shall see to it that the Medical Staff is organized into a responsible administrative unit, and adopts such Bylaws, Rules and Regulations for government of their practice in the Hospital as the Board of Directors determines to be of benefit to the care of patients of the Hospital. The Board of Directors, through the Professional Committee, shall hold the Medical Staff responsible for making recommendations to the Board of Directors concerning initial staff appointments, re-appointments and the assignment or curtailment of privileges, and for the receipt of regular reports on the review processes carried out by the Medical Staff.

Bylaws, Rules and Regulations for the Medical Staff setting forth its organization, government, mechanisms for appointment, means to insure the achievement of high standards of professional practice and an appeal mechanism, shall be recommended by the Medical Staff to the Board of Directors through the Professional Committee of the Board and shall be subject to the Approval of the Board of Directors.

In cases where the Board of Directors does not concur in a Medical Staff recommendation relative to clinical privileges, the recommendation shall be reviewed by a committee composed of the Professional Committee and the Executive Committee of the Medical Staff and may be resubmitted by this committee for final decision by the Board of Directors.

Only members of the Medical Staff can admit patients to the Hospital. Physician members of the Medical Staff are responsible for the medical aspects of patients' care.